

Sec. 46. PAPERWORK REDUCTION. The commission may not require a person who has held a license for five or more years to complete an application for the renewal of the license that is more than two pages in length.

SECTION 12. (a) Except as provided by Subsection (b) of this section, this Act applies to the operation of a bingo game, the award of prizes, the disbursement of funds for a charitable purpose, or other action taken on or after October 1, 1997. The law in effect before October 1, 1997, is continued in effect for the purposes of the calculation and distribution of funds and the operation of a bingo game by a licensed authorized organization before October 1, 1997.

(b) Not later than July 1, 1997, the Texas Lottery Commission shall adopt rules under Section 19a, Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes), as amended by this Act, relating to the operation of bingo by bingo license holders and the distribution of proceeds for charitable purposes.

SECTION 13. The Texas Legislative Council shall prepare a nonsubstantive revision of the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes) for consideration by the 76th Legislature at its regular session in 1999.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imporative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on May 10, 1997: Yeas 140, Nays 0, 2 present, not voting; the House refused to concur in Senate amendments to H.B. No. 2086 on May 23, 1997, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 2086 on May 31, 1997: Yeas 131, Nays 4, 2 present, not voting; passed by the Senate, with amendments, on May 21, 1997: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 2086 on May 31, 1997: Yeas 30, Nays 0.

Approved June 19, 1997.

Effective June 19, 1997.

CHAPTER 1010

S.B. No. 1

AN ACT

relating to the development and management of the water resources of the state; providing penalties.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. WATER PLANNING: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT

SECTION 1.01. Section 16.051, Water Code, is amended to read as follows:

Sec. 16.051. STATE WATER PLAN: DROUGHT, CONSERVATION, DEVELOPMENT, AND MANAGEMENT; EFFECT OF PLAN. (a) *No later than September 1, 2001, and every five years thereafter, the board [The executive administrator] shall adopt [prepare, develop, and formulate] a comprehensive state water plan that incorporates the regional water plans approved under Section 16.053 of this code. The state water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state.*

(b) *The state water plan, as formally adopted by the board, shall be a guide to state water policy. The commission shall take the plan into consideration in matters coming before it.*

(c) *The board by rule [plan] shall define and designate river basins and watersheds.*

(d) *The board, in coordination with the commission and the Parks and Wildlife Department, shall adopt by rule guidance principles for the state water plan which reflect the public interest of the entire state. When adopting guidance principles, due consideration shall be given to the construction and improvement of surface water resources and the application of principles that result in voluntary redistribution of water resources.*

(e) *On adoption the board shall deliver the state water plan to the governor, the lieutenant governor, and the speaker of the house of representatives and present the plan for review to the appropriate legislative committees. The plan shall include legislative recommendations that the board believes are needed and desirable to facilitate more voluntary water transfers. The plan shall identify river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the board recommends for protection under this section.*

(f) *The legislature may designate a:*

(1) *river or stream segment of unique ecological value; or*

(2) *site of unique value for the construction of a reservoir.*

(g) *A state agency or political subdivision of the state may not obtain a fee title or an easement that would:*

(1) *destroy the unique ecological value of a river or stream segment designated by the legislature under Subsection (f) of this section; or*

(2) *significantly prevent the construction of a reservoir on a site designated by the legislature under Subsection (f) of this section.*

(h) *The board, the commission, or the Parks and Wildlife Department or a political subdivision affected by an action taken in violation of Subsection (g) of this section may bring a cause of action to remedy or prevent the violation. A cause of action brought under this subsection must be filed in a district court in Travis County or in the county in which the action is proposed or occurring. ~~[(e) The executive administrator shall be governed in his preparation of the plan by a regard for the public interest of the entire state. The executive administrator shall direct his efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.~~*

~~[(d) The executive administrator shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and to the effect of the plan on navigation.]~~

SECTION 1.02. Sections 16.053 through 16.057, Water Code, are amended to read as follows:

Sec. 16.053. **REGIONAL WATER PLANS.** (a) *The regional water planning group in each regional water planning area shall prepare a regional water plan, using an existing state water plan identified in Section 16.051 of this code and local water plans prepared under Section 16.054 of this code as a guide, if present, that provides for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of that particular region.*

(b) *No later than September 1, 1998, the board shall designate the areas for which regional water plans shall be developed, taking into consideration such factors as river basin and aquifer delineations, water utility development patterns, socioeconomic characteristics, existing regional water planning areas, political subdivision boundaries, public comment, and other factors the board deems relevant. The board shall review and update the designations as necessary but at least every five years.*

(c) *No later than 60 days after the designation of the regions under Subsection (b) of this section, the board shall designate representatives within each regional water planning area*

to serve as the initial coordinating body for planning. The initial coordinating body shall then designate additional representatives to serve on the regional water planning group, ensuring adequate representation from the interests comprising that region, including but not limited to the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, water districts, and water utilities.

(d) The board shall provide guidelines for the consideration of existing regional planning efforts by regional water planning groups. The board shall provide guidelines for the format in which information shall be presented in the regional water plans. Nothing in the initial planning effort shall prevent development of a management plan or project where local or regional needs require action prior to completion of the initial regional water plan under this section.

(e) Each regional water planning group shall submit to the board a regional water plan that:

(1) is consistent with the guidance principles for the state water plan adopted by the board under Section 16.051(d) of this code;

(2) provides information based on data provided or approved by the board in a format consistent with the guidelines provided by the board under Subsection (d) of this section;

(3) has specific provisions for water management strategies to be used:

(A) during a drought of record;

(B) when flows are at 75 percent of normal; and

(C) when flows are at 50 percent of normal;

(4) includes but is not limited to consideration of the following:

(A) any existing water or drought planning efforts addressing all or a portion of the region;

(B) certified groundwater conservation district management plans and other plans submitted under Section 16.054 of this code;

(C) all potentially feasible water management strategies, including but not limited to improved conservation, reuse, and management of existing water supplies, acquisition of available existing water supplies, and development of new water supplies;

(D) protection of existing water rights in the region;

(E) opportunities for and the benefits of developing regional water supply facilities or providing regional management of water supply facilities;

(F) appropriate provision for environmental water needs and for the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and the effect of plans on navigation;

(G) provisions in Section 11.085(k)(1) of this code if interbasin transfers are contemplated;

(H) voluntary transfer of water within the region using, but not limited to, regional water banks, sales, leases, options, subordination agreements, and financing agreements; and

(I) emergency transfer of water under Section 11.139 of this code, including information on the part of each permit, certified filing, or certificate of adjudication for nonmunicipal use in the region that may be transferred without causing unreasonable damage to the property of the nonmunicipal water rights holder; and

(5) identifies river and stream segments of unique ecological value and sites of unique value for the construction of reservoirs that the regional water planning group recommends for protection under Section 16.051 of this code.

(f) No later than September 1, 1998, the board shall adopt rules:

(1) to provide for the procedures for adoption of regional water plans by regional water planning groups and for approval of regional water plans by the board; and

(2) to govern procedures to be followed in carrying out the responsibilities of this section.

(g) The board shall provide technical and financial assistance to the regional water planning groups in the development of their plans. The board shall simplify, as much as possible, planning requirements in regions with abundant water resources. The board, if requested, may facilitate resolution of conflicts within regions.

(h)(1) Prior to the preparation of the regional water plan, the regional water planning group shall, after notice, hold at least one public meeting at some central location within the regional planning area to gather suggestions and recommendations from the public as to issues that should be addressed in the plan or provisions that should be considered for inclusion in the plan.

(2) The regional water planning group shall provide an ongoing opportunity for public input during the preparation of the regional water plan.

(3) After the regional water plan is initially prepared, the regional water planning group shall, after notice, hold at least one public hearing at some central location within the regional water planning area. The group shall make copies of the plan available for public inspection at least one month before the hearing by providing a copy of the plan in the county courthouse and at least one public library of each county having land in the region. Notice for the hearing shall include a listing of these and any other location where the plan is available for review.

(4) After the regional water plan is initially prepared, the regional water planning group shall submit a copy of the plan to the board. The board shall submit comments on the regional water plan as to whether the plan meets the requirements of Subsection (e) of this section.

(5) If no interregional conflicts exist, the regional water planning group shall consider all public and board comments; prepare, revise, and adopt the final plan; and submit the adopted plan to the board for approval and inclusion in the state water plan.

(6) If an interregional conflict exists, the board shall facilitate coordination between the involved regions to resolve the conflict. If conflict remains, the board shall resolve the conflict. On resolution of the conflict, the involved regional water planning groups shall prepare revisions to their respective plans and hold, after notice, at least one public hearing at some central location within their respective regional water planning areas. The regional water planning groups shall consider all public and board comments; prepare, revise, and adopt their respective plans; and submit their plans to the board for approval and inclusion in the state water plan.

(7) The board may approve a regional water plan only after it has determined that all interregional conflicts involving that regional water planning area have been resolved.

(8) Notice required by Subdivision (1), (3), or (6) of this subsection must be:

(A) published once in a newspaper of general circulation in each county located in whole or in part in the regional water planning area before the 30th day preceding the date of the public meeting or hearing; and

(B) mailed to:

(i) each mayor of a municipality with a population of 1,000 or more that is located in whole or in part in the regional water planning area;

(ii) each county judge of a county located in whole or in part in the regional water planning area;

(iii) each special or general law district or river authority with responsibility to manage or supply water in the regional water planning area;

(iv) each retail public utility that:

(a) serves any part of the regional water planning area; or

(b) receives water from the regional water planning area; and

(v) each holder of record of a permit, certified filing, or certificate of adjudication for the use of surface water the diversion of which occurs in the regional water planning area.

- (9) Notice published or mailed under Subdivision (8) of this subsection must contain:
- (A) the date, time, and location of the public meeting or hearing;
 - (B) a summary of the proposed action to be taken;
 - (C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and
 - (D) information on how the public may submit comments.
- (i) The regional water planning groups shall submit their adopted regional water plans to the board by September 1, 2000, for approval and inclusion in the state water plan. In conjunction with the submission of regional water plans, each planning group should make legislative recommendations, if any, to facilitate more voluntary water transfers in the region. Subsequent regional water plans shall be submitted at least every five years thereafter. Public participation for revised regional plans shall follow the procedures under Subsection (h) of this section.
- (j) The board may provide financial assistance to political subdivisions under Subchapters E and F of this chapter and Subchapters C, D, E, F, and J, Chapter 15, and Subchapters D, I, K, and L, Chapter 17, of this code for water supply projects only if:
- (1) the board determines that the needs to be addressed by the project will be addressed in a manner that is consistent with the state water plan; and
 - (2) beginning September 1, 2001, the board:
 - (A) has approved a regional water plan as provided by Subsection (i) of this section, and any required updates of the plan, for the region of the state that includes the area benefiting from the proposed project; and
 - (B) determines that the needs to be addressed by the project will be addressed in a manner that is consistent with that regional water plan.
- (k) The board may waive the requirements of Subsection (j) of this section if the board determines that conditions warrant the waiver. ~~(HEARING ON PRELIMINARY PLAN. (a) After the executive administrator completes his preliminary planning of the water resources development within a river basin, he shall hold a public hearing, after notice, at some central location within the river basin. If the proposed plan involves the transfer of water from one basin to another, the hearing shall be held at some location convenient to the areas affected.~~
- ~~(b) The executive administrator shall present the proposed plan of development and hear evidence for and against the plan.~~
- ~~(c) After the hearing, the executive administrator shall consider the effect the plan will have on the present and future development, economy, general welfare, and water requirements of the river basin or the areas affected.]~~
- Sec. 16.054. **LOCAL WATER PLANNING.** (a) It is the policy of the state that water resource management, water conservation, and drought planning should occur on an ongoing basis. The board, commission, and Parks and Wildlife Department shall make available where appropriate technical and financial assistance for such planning.
- (b) Local plans may be submitted to the appropriate regional water planning group for the area as follows:
- (1) holders of existing permits, certified filings, or certificates of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more may submit plans required by Section 11.1271 of this code;
 - (2) retail and wholesale public water suppliers and irrigation districts may submit plans required by Section 11.1272 of this code;
 - (3) groundwater districts may submit management plans certified under Section 36.1072 of this code; and
 - (4) special districts may submit conservation or management plans required by general or special law.
- (c) The regional water planning group shall consider any plan submitted under this section when preparing the regional water plan under Section 16.053 of this code.

(d) When preparing individual water plans that address drought or the development, management, or conservation of water resources from the holders of existing permits, certified filings, or certificates of adjudication, the water suppliers, groundwater districts, special districts, irrigation districts, and other water users should ensure that the plan is not in conflict with the applicable approved regional water plan for their region. ~~[HEARING ON COMPLETED STATE WATER PLAN. When the executive administrator has prepared and examined the completed preliminary plan, the board shall hold a public hearing on the plan to determine whether or not it gives adequate consideration to the protection of existing water rights in this state and whether or not it takes into account modes and procedures for the equitable adjustment of water rights affected by the plan. After the hearing, the board may formally adopt the state water plan. A majority vote is necessary for adoption.]~~

Sec. 16.055. **DROUGHT RESPONSE PLAN.** (a) The division of emergency management of the office of the governor shall be responsible for coordinating the drought response component of the state water plan.

(b) The drought response and monitoring committee is created and shall meet as necessary to carry out the provisions of this section. The committee is composed of one representative from each of the following entities, appointed by the administrative head of that entity:

- (1) the division of emergency management of the office of the governor;
- (2) the board;
- (3) the commission;
- (4) the Parks and Wildlife Department;
- (5) the Department of Agriculture;
- (6) the Texas Agricultural Extension Service; and
- (7) the State Soil and Water Conservation Board.

(c) The governor may designate any other person or a representative of any other entity to serve on the committee.

(d) The representative of the division of emergency management shall serve as chair of the committee.

(e) The committee shall be responsible for:

- (1) the assessment and public reporting of drought monitoring and water supply conditions;
- (2) advising the governor on significant drought conditions;
- (3) recommending specific provisions for a defined state response to drought-related disasters for inclusion in the state emergency management plan and the state water plan;
- (4) advising the regional water planning groups on drought-related issues in the regional water plans; and
- (5) ensuring effective coordination among state, local, and federal agencies in drought-response planning.

(f) In performing its duties under this section, the drought response and monitoring committee shall consider the following factors when determining whether a drought exists for the purposes of this section:

- (1) meteorological conditions and forecasts;
- (2) hydrological conditions and forecasts;
- (3) water use and demand forecasts;
- (4) water supply conditions and forecasts;
- (5) the potential impacts of the water shortage on: the public health, safety, and welfare; economic development; and agricultural and natural resources; and
- (6) other factors deemed appropriate by the committee. ~~[EFFECT OF PLAN. (a) The state water plan, as formally adopted by the board, shall be a flexible guide to state policy for the development of water resources in this state.]~~

~~(b) The commission shall take the plan into consideration in matters coming before it but is not bound by the plan.~~

~~(c) Nothing in the state water plan or any amendment or modification of the plan affects any vested right existing before August 30, 1965.]~~

~~Sec. 16.056.]AMENDMENT OF PLAN. (a) The board shall review the plan biennially to consider any amendment or modification that may be needed because of changed conditions.~~

~~(b) The board shall amend or modify the plan as experience and changed conditions require after holding a public hearing on any amendment or modification in the manner and for the purposes provided by Section 16.054 of this code.~~

~~(c) Any amendment or modification adopted by the board becomes a part of the plan.~~

~~[Sec. 16.057.] FEDERAL ASSISTANCE IN FINANCING REGIONAL WATER PLANS [PLAN]. The executive administrator may take all necessary action to qualify for federal assistance in financing the development and improvement of the regional water plans [plan].~~

SECTION 1.03. Subchapter D, Chapter 11, Water Code, is amended by amending Sections 11.122 and 11.1271 and adding Section 11.1272 to read as follows:

Sec. 11.122. AMENDMENTS TO WATER RIGHTS REQUIRED. (a) All holders of permits, certified filings, and certificates of adjudication issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right.

(b) *Subject to meeting all other applicable requirements of this chapter for the approval of an application, an amendment, except an amendment to a water right that increases the amount of water authorized to be diverted or the authorized rate of diversion, shall be authorized if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment.*

(c) The commission shall adopt rules to effectuate the provisions of this section.

Sec. 11.1271. ADDITIONAL REQUIREMENTS: WATER CONSERVATION PLANS. (a) The commission shall ~~[may]~~ require from an applicant for a new or amended water right the formulation and submission of a water conservation plan and the adoption of reasonable water conservation measures, as defined by Subdivision (8)(B), Section 11.002, of this code.

(b) *The commission shall require the holder of an existing permit, certified filing, or certificate of adjudication for the appropriation of surface water in the amount of 1,000 acre-feet a year or more for municipal, industrial, and other uses, and 10,000 acre-feet a year or more for irrigation uses, to develop, submit, and implement a water conservation plan, consistent with the appropriate approved regional water plan, that adopts reasonable water conservation measures as defined by Subdivision (8)(B), Section 11.002, of this code. The requirement for a water conservation plan under this section shall not result in the need for an amendment to an existing permit, certified filing, or certificate of adjudication.*

(c) The commission shall adopt rules establishing criteria and deadlines for submission of water conservation plans.

Sec. 11.1272. ADDITIONAL REQUIREMENT: DROUGHT CONTINGENCY PLANS FOR CERTAIN APPLICANTS AND WATER RIGHT HOLDERS. (a) The commission shall by rule require wholesale and retail public water suppliers and irrigation districts to develop drought contingency plans consistent with the appropriate approved regional water plan to be implemented during periods of water shortages and drought.

(b) *The wholesale and retail public water suppliers and irrigation districts shall provide an opportunity for public input during preparation of their drought contingency plans and before submission of the plans to the commission.*

SECTION 1.04. Section 15.401, Water Code, is amended to read as follows:

Sec. 15.401. PROGRAM CREATION. The research and planning program is created to provide money for research into and planning of the proper conservation, management, and development of the state's water resources, for regional planning by political subdivisions,

for facility engineering in economically distressed areas, and for flood control planning by political subdivisions. *The program may also provide money for research and planning by Texas political subdivisions related to the proper conservation, management, and development of water resources of areas outside Texas if such research or planning will result in water being available for use in or for the benefit of Texas or will maintain and enhance the quality of water in Texas.*

SECTION 1.05. Subsection (a), Section 15.404, Water Code, is amended to read as follows:

(a) The board may enter into a contract with any person for research into any matter relating to the conservation and development of the state's water resources *or for research by Texas political subdivisions related to the proper conservation and development of water resources of areas outside Texas if such research will result in water being available for use in or for the benefit of Texas or will help maintain and enhance the quality of water in Texas.*

SECTION 1.06. Subsection (f), Section 15.406, Water Code, is amended to read as follows:

(f) The board shall adopt rules establishing criteria of eligibility for regional facility planning money that considers:

- (1) the relative need of the political subdivision for the money;
- (2) the legal authority of the political subdivision to plan, develop, and operate regional facilities; ~~and~~
- (3) the effect of regional facility planning by the political subdivision on overall regional facility planning, development, and operation in the state and within the area in which the political subdivision is located; *and*
- (4) *the degree to which the regional facility planning by the political subdivision is consistent with an approved regional water plan for the area in which the political subdivision is located.*

SECTION 1.07. Subchapter F, Chapter 15, Water Code, is amended by adding Section 15.4061 to read as follows:

Sec. 15.4061. FUNDING FOR REGIONAL WATER PLANS. (a) The board may enter into contracts with political subdivisions designated as representatives of a regional water planning group under Section 16.053(c) of this code to pay from the research and planning fund all or part of the cost of developing or revising regional water plans as defined in Section 16.053 of this code.

(b) A political subdivision may submit, either individually or jointly with other political subdivisions, a written application to the board for the purpose of funding regional water planning from the research and planning fund.

(c) The application shall be in the manner and form required by board rules and include:

- (1) the name of the political subdivision or political subdivisions;*
- (2) a citation to the laws under which the political subdivision was created and is operating, including specific citation of all laws providing authority to develop and implement a regional water plan;*
- (3) the amount requested from the board for regional water planning; and*
- (4) any other relevant information required by the board in its rules or specifically requested by the board.*

(d) After notice and hearing, the board may award the applicant all or part of the requested funds that the board considers necessary for the political subdivision to carry out regional water planning.

(e) If the board grants an application under this section and awards funds for regional water planning, the board shall enter into a contract with the political subdivision or political subdivisions that includes:

- (1) a detailed statement of the purpose for which the money is to be used;*
- (2) the total amount of money to be paid by the board from the research and planning fund under the contract; and*

(3) any other terms and conditions required by the board's rules or agreed to by the contracting parties.

(f) The board shall adopt rules establishing criteria for eligibility for regional water planning money that include:

(1) the relative need of the political subdivision for the money;

(2) the legal authority of the political subdivision to develop and implement a regional water plan; and

(3) the degree to which regional water planning by the political subdivision or political subdivisions will address the water supply needs in the regional water planning area.

(g) The board may not provide funds under this section for activities for which existing information or data is sufficient for the planning effort, including:

(1) detailed evaluation of cost of water supply alternatives where recent information is available to evaluate the cost associated with the alternative;

(2) evaluation of groundwater resources for which current information is available from the board or other entity sufficient for evaluation of the resource;

(3) determination of water savings resulting from standard conservation practices for which current information is available from the board;

(4) revision of board demand and population projections;

(5) revision of environmental planning criteria for new surface water supply projects as defined in the state water plan guidelines established in Section 16.051(d) of this section; and

(6) collection of data describing groundwater or surface water resources where information for evaluation of the resource is currently available.

(h) The board shall require that regional water plans developed or revised under contracts entered into under this section be made available to the commission and the Parks and Wildlife Department.

SECTION 1.08. (a) Except as provided by Subsection (b) of this section, the state water plan in effect on the effective date of this Act remains in effect until a new state water plan is adopted under Subsection (a), Section 16.051, Water Code, as amended by Section 1.01 of this Act.

(b) The state water plan shall include ongoing water development projects that have been issued a permit by the Texas Natural Resource Conservation Commission or a predecessor agency for a regional water supply planning study.

ARTICLE 2. WATER MANAGEMENT, MARKETING, AND TRANSFERS

SECTION 2.01. Section 791.026, Government Code, is amended to read as follows:

Sec. 791.026. **CONTRACTS FOR WATER SUPPLY AND WASTEWATER TREATMENT FACILITIES.** (a) A municipality, district, or river authority of this state may contract with another municipality, district, or river authority of this state to obtain or provide part or all of:

(1) water supply or wastewater treatment facilities; or

(2) a lease or operation of water supply facilities or wastewater treatment facilities.

(b) The contract may provide that the municipality, district, or river authority obtaining one of the services may not obtain those services from a source other than a contracting party, except as provided by the contract.

(c) If a contract includes a term described by Subsection (b), payments made under the contract are the paying party's operating expenses for its water supply system, wastewater treatment facilities, or both.

(d) The contract may:

(1) contain terms and extend for any period on which the parties agree; [and]

(2) *require the purchaser to develop alternative or replacement supplies prior to the expiration date of the contract and may provide for enforcement of such terms by court order; and*

(3) *provide that it will continue in effect until bonds specified by the contract and any refunding bonds issued to pay those bonds are paid.*

(e) *Where a contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.*

(f) *Tax revenue may not be pledged to the payment of amounts agreed to be paid under the contract.*

(g) ~~(f)~~ *The powers granted by this section prevail over a limitation contained in another law.*

SECTION 2.02. Section 11.002, Water Code, is amended by amending Subdivision (4) and adding Subdivisions (9) and (10) to read as follows:

(4) *"Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.*

(9) *"Conserved water" means that amount of water saved by a holder of an existing permit, certified filing, or certificate of adjudication through practices, techniques, and technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from storage, transportation, distribution, or application.*

(10) *"Surplus water" means water in excess of the initial or continued beneficial use of the appropriator.*

SECTION 2.03. Subsection (e), Section 11.023, Water Code, is amended to read as follows:

(e) *The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code. The commission may authorize appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.*

SECTION 2.04. Subchapter B, Chapter 11, Water Code, is amended by adding Section 11.0275 to read as follows:

Sec. 11.0275. *FAIR MARKET VALUE. Whenever the law requires the payment of fair market value for a water right, fair market value shall be determined by the amount of money that a willing buyer would pay a willing seller, neither of which is under any compulsion to buy or sell, for the water in an arms-length transaction and shall not be limited to the amount of money that the owner of the water right has paid or is paying for the water.*

SECTION 2.05. Section 11.036, Water Code, is amended to read as follows:

Sec. 11.036. **CONSERVED OR STORED WATER: SUPPLY CONTRACT.** (a) *A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.*

(b) *The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If the contract sets forth explicit expiration provisions, no continuation of the service obligation will be implied.*

(c) *The terms of a contract may expressly provide that the person using the stored or conserved water is required to develop alternative or replacement supplies prior to the expiration of the contract and may further provide for enforcement of such terms by court order.*

(d) If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

SECTION 2.06. Section 11.042, Water Code, is amended to read as follows:

Sec. 11.042. **DELIVERING WATER DOWN BANKS AND BEDS.** (a) Under rules prescribed by the commission, a person, association of persons, corporation, ~~[or] water control and improvement district, water improvement district,~~ or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion point ~~[plant]~~ of the appropriator. ~~[The commission shall prescribe rules for this purpose.]~~

(b) *A person who wishes to discharge and then subsequently divert and reuse the person's existing return flows derived from privately owned groundwater must obtain prior authorization from the commission for the diversion and the reuse of these return flows. The authorization may allow for the diversion and reuse by the discharger of existing return flows, less carriage losses, and shall be subject to special conditions if necessary to protect an existing water right that was granted based on the use or availability of these return flows. Special conditions may also be provided to help maintain instream uses and freshwater inflows to bays and estuaries. A person wishing to divert and reuse future increases of return flows derived from privately owned groundwater must obtain authorization to reuse increases in return flows before the increase.*

(c) *Except as otherwise provided in Subsection (a) of this section, a person who wishes to convey and subsequently divert water in a watercourse or stream must obtain the prior approval of the commission through a bed and banks authorization. The authorization shall allow to be diverted only the amount of water put into a watercourse or stream, less carriage losses and subject to any special conditions that may address the impact of the discharge, conveyance, and diversion on existing permits, certified filings, or certificates of adjudication, instream uses, and freshwater inflows to bays and estuaries. Water discharged into a watercourse or stream under this chapter shall not cause a degradation of water quality to the extent that the stream segment's classification would be lowered. Authorizations under this section and water quality authorizations may be approved in a consolidated permit proceeding.*

(d) *Nothing in this section shall be construed to affect an existing project for which water rights and reuse authorizations have been granted by the commission before September 1, 1997.*

SECTION 2.07. Section 11.046, Water Code, is amended to read as follows:

Sec. 11.046. **RETURN SURPLUS ~~[UNUSED]~~ WATER.** (a) A person who takes or diverts water from a watercourse or ~~[running]~~ stream for the purposes authorized by this code shall conduct surplus water back to the watercourse or stream from which it was taken if the water can be returned by gravity flow and it is reasonably practicable to do so.

(b) *In granting an application for a water right, the commission may include conditions in the water right providing for the return of surplus water, in a specific amount or percentage of water diverted, and the return point on a watercourse or stream as necessary to protect senior downstream permits, certified filings, or certificates of adjudication or to provide flows for instream uses or bays and estuaries.*

(c) *Except as specifically provided otherwise in the water right, water appropriated under a permit, certified filing, or certificate of adjudication may, prior to its release into a watercourse or stream, be beneficially used and reused by the holder of a permit, certified filing, or certificate of adjudication for the purposes and locations of use provided in the permit, certified filing, or certificate of adjudication. Once water has been diverted under a permit, certified filing, or certificate of adjudication and then returned to a watercourse or stream, however, it is considered surplus water and therefore subject to reservation for instream uses or beneficial inflows or to appropriation by others unless expressly provided otherwise in the permit, certified filing, or certificate of adjudication.*

(d) Water appropriated under a permit, certified filing, or certificate of adjudication which is recirculated within a reservoir for cooling purposes shall not be considered to be surplus for purposes of this chapter.

SECTION 2.08. Section 11.085, Water Code, is amended to read as follows:

Sec. 11.085. *INTERBASIN [INTERWATERSHED] TRANSFERS.* (a) No person may take or divert any state ~~[of the]~~ water from a river basin ~~[of the ordinary flow, underflow, or storm flow of any stream, watercourse, or watershed]~~ in this state and transfer such water to ~~[into]~~ any other river basin ~~[natural stream, watercourse, or watershed to the prejudice of any person or property situated within the watershed from which the water is proposed to be taken or diverted.~~

~~[(b) No person may transfer water from one watershed to another]~~ without first applying for and receiving a water right or an amendment to a permit, certified filing, or certificate of adjudication ~~[permit]~~ from the commission authorizing the transfer ~~[to do so. Before issuing such a permit, the commission shall hold a hearing to determine the rights that might be affected by the transfer. The commission shall give notice and hold the hearing in the manner prescribed by its procedural rules].~~

(b) The application must include:

- (1) the contract price of the water to be transferred;
- (2) a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;
- (3) the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and
- (4) the projected effect on user rates and fees for each class of ratepayers.

(c) The applicant shall provide the information described by Subsection (b) of this section to any person on request and without cost.

(d) Prior to taking action on an application for an interbasin transfer, the commission shall conduct at least one public meeting to receive comments in both the basin of origin of the water proposed for transfer and the basin receiving water from the proposed transfer. Notice shall be provided pursuant to Subsection (g) of this section. Any person may present relevant information and data at the meeting on the criteria which the commission is to consider related to the interbasin transfer.

(e) In addition to the public meetings required by Subsection (d) of this section, if the application is contested in a manner requiring an evidentiary hearing under the rules of the commission, the commission shall give notice and hold an evidentiary hearing, in accordance with commission rules and applicable state law.

(f) Notice of an application for an interbasin transfer shall be mailed to the following:

- (1) all holders of permits, certified filings, or certificates of adjudication located in whole or in part in the basin of origin;
- (2) each county judge of a county located in whole or in part in the basin of origin;
- (3) each mayor of a city with a population of 1,000 or more located in whole or in part in the basin of origin; and
- (4) all groundwater conservation districts located in whole or in part in the basin of origin; and
- (5) each state legislator in both basins.

(g) The applicant shall cause the notice of application for an interbasin transfer to be published once a week for two consecutive weeks in one or more newspapers having general circulation in each county located in whole or in part in the basin of origin or the receiving basin. The published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The notice of application and public meetings shall be combined in the mailed and published notices.

(h) The notice of application must state how a person may obtain the information described by Subsection (b) of this section.

(i) *The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.*

(j) *In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall:*

(1) request review and comment on an application for an interbasin transfer from each county judge of a county located in whole or in part in the basin of origin. A county judge should make comment only after seeking advice from the county commissioners court; and

(2) give consideration to the comments of each county judge of a county located in whole or in part in the basin of origin prior to taking action on an application for an interbasin transfer.

(k) *In addition to other requirements of this code relating to the review of and action on an application for a new water right or amended permit, certified filing, or certificate of adjudication, the commission shall weigh the effects of the proposed transfer by considering:*

(1) the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years;

(2) factors identified in the applicable approved regional water plans which address the following:

(A) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;

(B) the amount and purposes of use in the receiving basin for which water is needed;

(C) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;

(D) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;

(E) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and

(F) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 of this code in each basin. If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;

(3) proposed mitigation or compensation, if any, to the basin of origin by the applicant;

(4) the continued need to use the water for the purposes authorized under the existing permit, certified filing, or certificate of adjudication, if an amendment to an existing water right is sought; and

(5) the information required to be submitted by the applicant.

(l) *The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that:*

(1) the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period; and

(2) the applicant for the interbasin transfer has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

(m) *The commission may grant new or amended water rights under this section with or without specific terms or periods of use and with specific conditions under which a transfer of water may occur.*

(n) *If the transfer of water is based on a contractual sale of water, the new water right or amended permit, certified filing, or certificate of adjudication authorizing the transfer shall contain a condition for a term or period not greater than the contract term.*

(o) *The parties to a contract for an interbasin transfer may include provisions for compensation and mitigation. If the party from the basin of origin is a government entity, each county judge of a county located in whole or in part in the basin of origin may provide input on the appropriate compensation and mitigation for the interbasin transfer.*

(p) *For the purposes of this section, a basin is designated as provided in accordance with Section 16.051 of this code. A basin may not be redesignated in order to allow a transfer or diversion of water otherwise in violation of this section.*

(q) [(e)] *A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not [less than \$100 nor] more than \$1,000 [\$500] or by confinement in the county jail for not more than six months.*

(r) [(d)] *A person commits a separate offense each day he continues to take or divert water in violation of this section.*

(s) *Any proposed transfer of all or a portion of a water right under this section is junior in priority to water rights granted before the time application for transfer is accepted for filing.*

(t) *Any proposed transfer of all or a portion of a water right under this section from a river basin in which two or more river authorities or water districts created under Section 59, Article XVI, Texas Constitution, have written agreements or permits that provide for the coordinated operation of their respective reservoirs to maximize the amount of water for beneficial use within their respective water services areas shall be junior in priority to water rights granted before the time application for transfer is accepted for filing.*

(u) *An appropriator of water for municipal purposes in the basin of origin may, at the appropriator's option, be a party in any hearings under this section.*

(v) *The provisions of this section, except Subsection (a), do not apply to:*

(1) *a proposed transfer which in combination with any existing transfers totals less than 3,000 acre-feet of water per annum from the same permit, certified filing, or certificate of adjudication;*

(2) *a request for an emergency transfer of water;*

(3) *a proposed transfer from a basin to its adjoining coastat basin; or*

(4) *a proposed transfer from a basin to a county or municipality or the municipality's retail service area that is partially within the basin for use in that part of the county or municipality and the municipality's retail service area not within the basin.*

SECTION 2.09. Subsection (a), Section 11.124, Water Code, is amended to read as follows:

(a) *An application to appropriate unappropriated state water must:*

(1) *be in writing and sworn to;*

(2) *contain the name and post-office address of the applicant;*

(3) *identify the source of water supply;*

(4) *state the nature and purposes of the proposed use or uses and the amount of water to be used for each purpose;*

(5) *state the location and describe the proposed facilities;*

(6) *state the time within which the proposed construction is to begin; [and]*

(7) *state the time required for the application of water to the proposed use or uses; and*

(8) *contain the name and address of the holder of any lien on:*

(A) *any water right permit, certified filing, or certificate of adjudication to be granted under the permit for which application is made; or*

(B) *any land to which that water right permit, certified filing, or certificate of adjudication would be appurtenant.*

SECTION 2.10. Subsection (b), Section 11.135, Water Code, is amended to read as follows:

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

- (1) the name of the person to whom the permit is issued;
- (2) the date the permit is issued;
- (3) the date the original application was filed;
- (4) the use or purpose for which the appropriation is to be made;
- (5) the amount or volume of water authorized to be appropriated for each purpose; *if use of the appropriated water is authorized for multiple purposes, the permit shall contain a special condition limiting the total amount of water that may actually be diverted for all of the purposes to the amount of water appropriated;*
- (6) a general description of the source of supply from which the appropriation is proposed to be made;
- (7) the time within which construction or work must begin and the time within which it must be completed; and
- (8) any other information the commission prescribes.

SECTION 2.11. Subsection (a), Section 11.142, Water Code, is amended to read as follows:

(a) Without obtaining a permit, a person may construct on his own property a dam or reservoir *with normal storage of* ~~(to impound or contain)~~ not more than 200 acre-feet of water for domestic and livestock purposes.

SECTION 2.12. Sections 11.176 and 11.177, Water Code, are amended to read as follows:

Sec. 11.176. HEARING. (a) *Except as provided by Subsection (b) of this section, the* ~~[The]~~ commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

(b) *A hearing on the cancellation of a permit, certified filing, or certificate of adjudication as provided by this chapter is unnecessary if the right to such hearing is expressly waived by the affected holder of a permit, certified filing, or certificate of adjudication.*

(c) *A permit, certified filing, or certificate of adjudication for a term does not vest in the holder of a permit, certified filing, or certificate of adjudication any right to the diversion, impoundment, or use of water for longer than the term of the permit, certified filing, or certificate of adjudication and shall expire and be cancelled in accordance with its terms without further need for notice or hearing.*

Sec. 11.177. COMMISSION FINDING; ACTION. (a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication in whole or in part to the extent that it finds that:

(1) the water or any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period; *and*

(2) the holder has not used reasonable diligence in applying the water or the unused portion of the water to an authorized beneficial use *or is otherwise unjustified in the nonuse*; ~~and~~

~~[(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the water or the unused portion of the water to an authorized beneficial use within a reasonable time after the hearing].~~

(b) In determining what constitutes *reasonable diligence* or a justified nonuse ~~[and a reasonable time]~~ as used in Subsection (a)(2) ~~[(a)(3)]~~ of this section, the commission shall give consideration to:

(1) *whether sufficient water is available in the source of supply to meet all or part of the appropriation during the 10-year period of nonuse;*

(2) *whether the nonuse is justified by the holder's participation in the federal Conservation Reserve Program or a similar governmental program as provided by Section 11.173(b)(1) of this code;*

(3) *whether the permit, certified filing, or certificate of adjudication was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan developed by the holder and consistent with projections of future water needs contained in the state water plan;*

(4) *whether the permit, certified filing, or certificate of adjudication was obtained as the result of the construction of a reservoir funded, in whole or in part, by the holder of the permit, certified filing, or certificate of adjudication as part of the holder's long-term water planning;*

(5) *whether the existing or proposed authorized purpose and place of use are consistent with an approved regional water plan as provided by Section 16.053 of this code;*

(6) *whether the permit, certified filing, or certificate of adjudication has been deposited into the Texas Water Bank as provided by Sections 15.7031 and 15.704 of this code or whether it can be shown that the water right or water available under the right is currently being made available for purchase through private marketing efforts; or*

(7) *whether the permit, certified filing, or certificate of adjudication has been reserved to provide for instream flows or bay and estuary inflows [the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication];*

~~[(2) the purpose to which the water is to be applied;~~

~~[(3) the priority of the purpose;~~

~~[(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed; and~~

~~[(5) whether at all times during the 10-year period there was rainfall adequate to enable the use of all or part of the water authorized to be appropriated under the permit, certified filing, or certificate of adjudication].~~

SECTION 2.13. Section 15.701, Water Code, is amended to read as follows:

Sec. 15.701. DEFINITIONS. In this subchapter:

(1) "Deposit" means the placement of a water right or the right to use water in the water bank for transfer.

(2) "Depositor" means a person who deposits or has on deposit a water right in the water bank.

(3) "Person" includes but is not limited to any individual, corporation, organization, government, or governmental subdivision or agency, including the board, business trust, estate, trust, partnership, association, and any other legal entity.

(4) "Transfer" means the conveyance of a water right or the right to use water under a water right in any of the following manners:

(A) the conveyance of legal title to a water right; or

(B) a contract or option contract to allow use of a water right.

(5) "Trust" means the Texas Water Trust.

(6) "Water bank" or "bank" means the Texas Water Bank.

(7) [(6)] "Water right" means a right acquired or authorized under the laws of this state to impound, divert, or use state water, underground water, or water from any source to the extent authorized by law.

SECTION 2.14. Section 15.702, Water Code, is amended to read as follows:

Sec. 15.702. CREATION OF BANK. The Texas Water Development Board shall establish the Texas Water Bank. The board shall administer the water bank to facilitate *water transactions* ~~[the transfer of water from all sources as necessary]~~ to provide sources of adequate water supplies for use within the State of Texas.

SECTION 2.15. Subsection (a), Section 15.703, Water Code, is amended to read as follows:

(a) The board may take all actions necessary to operate the water bank and to facilitate the transfer of water rights from the water bank for future beneficial use including but not limited to:

- (1) negotiating a sale price and terms acceptable to the depositor and purchaser;
- (2) maintaining a registry of water bank deposits and those water users in need of additional supplies;
- (3) informing water users in need of additional supply of water rights available in the bank;
- (4) encouraging water right holders to implement water conservation practices and deposit the right to use the conserved water into the bank;
- (5) establishing requirements for deposit of a water right into the water bank including minimum terms for deposit;
- (6) purchasing, holding, and selling water rights in its own name;
- (7) establishing regional water banks; ~~and~~
- (8) *acting as a clearinghouse for water marketing information including water availability, pricing of water transactions, environmental considerations, and potential buyers and sellers of water rights;*
- (9) *preparing and publishing a manual on structuring water transactions;*
- (10) *accepting and holding donations of water rights to meet instream, water quality, fish and wildlife habitat, or bay and estuary inflow needs; and*
- (11) *other actions to facilitate water transactions [transfers].*

SECTION 2.16. Subchapter K, Chapter 15, Water Code, is amended by adding Section 15.7031 to read as follows:

Sec. 15.7031. TEXAS WATER TRUST. (a) The Texas Water Trust is established within the water bank to hold water rights dedicated to environmental needs, including instream flows, water quality, fish and wildlife habitat, or bay and estuary inflows.

(b) The board, in consultation with the Parks and Wildlife Department and the commission, shall adopt rules governing the process for holding and transferring water rights.

(c) The dedication of any water rights placed in trust must be reviewed and approved by the commission, in consultation with the board and the Parks and Wildlife Department.

(d) Water rights may be held in the trust for a term specified by contractual agreement or in perpetuity.

SECTION 2.17. Section 15.704, Water Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) ~~A [Up to 50 percent of a]~~ water right may be deposited in the water bank for an initial term of up to 10 years, *unless otherwise held in the Texas Water Trust as established under Section 15.7031 of this code*, during which time the water right is exempt from cancellation by the commission under the terms of Subchapter E of Chapter 11 of this code. A water right is exempt from cancellation under this subsection only once even if it has been transferred or redeposited.

(c) *A contract or option contract to allow use of a water right under this subchapter:*

(1) may include a requirement that the purchaser show diligence in pursuing feasible and practicable alternative water supplies; and

(2) does not vest any right in the purchaser beyond the stated terms and conditions of the contract or option contract.

SECTION 2.18. (a) All permits approved by the Texas Natural Resource Conservation Commission before the effective date of this Act that allow the multiple use of the appropriation of a specific amount of water and which are no longer subject to appeal are validated in all respects as if they originally had been legally authorized or accomplished.

(b) This article does not apply to an application for an interbasin transfer or reuse project using privately owned groundwater received and pending before March 2, 1997. Any subsequent renewals of such applications shall be subject to the provisions of this Act.

(c) Nothing in this Act shall affect the validity of any interbasin transfer permitted or authorized before the effective date of this Act.

ARTICLE 3. EMERGENCY AUTHORIZATIONS; ENFORCEMENT

SECTION 3.01. Subsection (a), Section 11.082, Water Code, is amended to read as follows:

(a) A person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is also liable to a civil penalty of not more than \$5,000 [~~\$1,000~~] for each day he continues the taking, diversion, or appropriation.

SECTION 3.02. Subchapter C, Chapter 11, Water Code, is amended by adding Sections 11.0841, 11.0842, and 11.0843 to read as follows:

Sec. 11.0841. *CIVIL REMEDY.* (a) *Nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.*

(b) *A district court may award the costs of litigation, including reasonable attorney fees and expert costs, to any political subdivision of the state, private corporation, or individual that is a water right holder and that prevails in a suit for injunctive relief to redress an unauthorized diversion, impoundment, or use of surface water in violation of this chapter or a rule adopted pursuant to this chapter.*

Sec. 11.0842. *ADMINISTRATIVE PENALTY.* (a) *If a person violates this chapter, a rule or order adopted under this chapter or Section 16.236 of this code, or a permit, certified filing, or certificate of adjudication issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section.*

(b) *The penalty may be in an amount not to exceed \$5,000 for each day the person is in violation of this chapter, the rule or order adopted under this chapter, or the permit, certified filing, or certificate of adjudication issued under this chapter. The penalty may be in an amount not to exceed \$1,000 for each day the person is in violation of the rule or order adopted under Section 16.236 of this code. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.*

(c) *In determining the amount of the penalty, the commission shall consider:*

(1) *the nature, circumstances, extent, duration, and gravity of the prohibited acts, with special emphasis on the impairment of an existing permit, certified filing, or certificate of adjudication or the hazard or potential hazard created to the health, safety, or welfare of the public;*

(2) *the impact of the violation on the instream uses, water quality, fish and wildlife habitat, or beneficial freshwater inflows to bays and estuaries;*

(3) *with respect to the alleged violator:*

(A) *the history and extent of previous violations;*

(B) *the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;*

(C) *demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;*

(D) *any economic benefit gained through the violation; and*

(E) *the amount necessary to deter future violations; and*

(4) *any other matters that justice may require.*

(d) *If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director shall issue a preliminary report stating the facts on which that conclusion was*

based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of the penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (c) of this section and shall analyze each factor for the benefit of the commission.

(e) No later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) No later than the 20th day after the date on which notice is received, the person charged may either give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or fails to timely respond to the notice, the commission by order shall either assess the penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty recommended by the report, the commission shall give written notice of its decision to the person charged.

(h) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order either may find that a violation has occurred and may assess a penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the commission shall analyze each of the factors provided by Subsection (c) of this section.

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and assesses an administrative penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (g) of this section, the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(j) Within the 30-day period immediately following the day on which the commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commission by certified mail.

(l) If the commission receives a copy of an affidavit under Subsection (k)(2) of this section, it may file with the court within five days after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(o) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(p) Notwithstanding any other provision to the contrary, the commission may compromise, modify, or remit, with or without condition, any penalty imposed under this section.

(q) Payment of an administrative penalty under this section shall be full and complete satisfaction of the violation for which the administrative penalty is assessed and shall preclude any other civil or criminal penalty for the same violation.

Sec. 11.0843. **FIELD CITATION.** (a) Upon witnessing a violation of this chapter or a rule or order or a water right issued under this chapter, a watermaster or the watermaster's deputy, as defined by commission rule, may issue the alleged violator a field citation alleging that a violation has occurred and providing the alleged violator the option of either:

(1) without admitting to or denying the alleged violation, paying an administrative penalty in accordance with the predetermined penalty amount established under Subsection (b) of this section and taking remedial action as provided in the citation; or

(2) requesting a hearing on the alleged violation in accordance with Section 11.0842 of this code.

(b) By rule the commission shall establish penalty amounts corresponding to types of violations of this chapter or rules or orders adopted or water rights issued under this chapter.

(c) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 3.03. Section 11.139, Water Code, is amended to read as follows:

Sec. 11.139. **EMERGENCY AUTHORIZATIONS [PERMITS].** (a) Except as provided by Section 11.148 of this code, the [The] commission may grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication after notice to the governor [for the diversion and use of water] for an initial [a] period of not more than 120 [30] days if the commission [it] finds that emergency conditions exist which present an imminent threat to [threaten] the public health and[, safety[, and welfare]] and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization. Such emergency action may be renewed once for not longer than 60 days.

(b) A person desiring to obtain an emergency authorization under this section shall submit to the commission a sworn application containing the following information:

(1) a description of the condition of emergency justifying the granting of the emergency authorization;

(2) a statement setting forth facts which support the findings required under this section;

(3) an estimate of the dates on which the proposed authorization should begin and end;

(4) a description of the action sought and the activity proposed to be allowed, mandated, or prohibited; and

(5) *any other statements or information required by the commission.*

(c) *If the commission finds the applicant's statement made under Subsection (b) of this section to be correct, the commission may grant emergency authorizations under this section without notice and hearing or with such notice and hearing as the commission considers practicable under the circumstances.*

(d) *If the commission grants an emergency authorization under this section without a hearing, the authorization shall fix a time and place for a hearing to be held before the commission. The hearing shall be held as soon after the emergency authorization is granted as is practicable but not later than 20 days after the emergency authorization is granted.*

(e) *At the hearing, the commission shall affirm, modify, or set aside the emergency authorization. Any hearing on an emergency authorization shall be conducted in accordance with Chapter 2001, Government Code, and rules of the commission.*

(f) *If an imminent threat to the public health and safety exists which requires emergency action before the commission can take action as provided by Subsections (a) through (c) of this section and there are no feasible alternatives, the executive director may grant an emergency authorization after notice to the governor. If the executive director issues an emergency authorization under this subsection, the commission shall hold a hearing as provided for in Subsections (d) and (e) of this section. The requirements of Subsection (b) of this section shall be satisfied by the applicant before action is taken by the executive director on the request for emergency authorization.*

(g) *The requirements of Section 11.132 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency authorization under this section, but such general notice of the hearing shall be given as the commission, under Subsections (c) and (e) of this section, considers practicable under the circumstances.*

(h) *The commission may grant an emergency authorization under this section for the temporary transfer and use of all or part of a permit, certified filing, or certificate of adjudication for other than domestic or municipal use to a retail or wholesale water supplier for public health and safety purposes. In addition to the requirements contained in Subsection (b) of this section, the commission may direct that the applicant will timely pay the amounts for which the applicant may be potentially liable under Subsection (j) of this section and to the extent authorized by law will fully indemnify and hold harmless the state, the executive director, and the commission from any and all liability for the authorization sought. The commission may order bond or other surety in a form acceptable to the commission as a condition for such emergency authorization. The commission may not grant an emergency authorization under this section which would cause a violation of a federal regulation.*

(i) *In transferring the amount of water requested by the applicant, the executive director or the commission shall allocate the requested amount among two or more permits, certified filings, or certificates of adjudication for other than domestic or municipal use.*

(j) *The person granted an emergency authorization under Subsection (h) of this section is liable to the owner and the owner's agent or lessee from whom the use is transferred for the fair market value of the water transferred as well as for any damages caused by the transfer of use. If, within 60 days of the termination of the authorization, the parties do not agree on the amount due, or if full payment is not made, either party may file a complaint with the commission to determine the amount due. The commission may use dispute resolution procedures for a complaint filed under this subsection. After exhausting all administrative remedies under this subsection, an owner from whom the use is transferred may file suit to recover or determine the amount due in a district court in the county where the owner resides or has its headquarters. The prevailing party in a suit filed under this subsection is entitled to recover court costs and reasonable attorney's fees.*

(k) ~~[An emergency permit may be granted for a period of not more than 30 days, and no extension or additional emergency permit may be granted at the expiration of the original permit.]~~

~~[(c) An emergency permit may be granted under this section without the necessity to comply with statutory and other procedures required for granting other permits issued by the commission.~~

~~[(d)]~~ The commission may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

~~(l) [(e)]~~ An emergency *authorization* [permit] does not vest in the *grantee* [permittee] any right to the diversion, *impoundment*, or [and] use of water and shall expire and be cancelled in accordance with its terms.

SECTION 3.04. Subsection (c), Section 12.052, Water Code, is amended to read as follows:

(c) If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's *final, nonappealable* order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than \$5,000 [~~\$1,000~~] a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

SECTION 3.05. Section 16.236, Water Code, is amended to read as follows:

Sec. 16.236. CONSTRUCTION OF LEVEE WITHOUT APPROVAL OF PLANS; LEVEE SAFETY. (a) No person may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows so as to control, regulate, or otherwise change the floodwater of the stream without first obtaining approval of the plans by the commission.

(b) *The commission shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of levees located in this state.*

(c) *If the owner of a levee that is required to be constructed, reconstructed, repaired, or removed to comply with the rules and orders promulgated under this section wilfully fails or refuses to comply within the 30-day period following the date of an order of the commission requiring such action or compliance or if a person wilfully fails to comply with any rule or order issued by the commission under this section within the 30-day period following the effective date of the order, the person is liable for a penalty of not more than \$1,000 a day for each day the person continues to violate this section. The state may recover the penalty by suit brought for that purpose in a district court of Travis County.*

(d) *If the commission determines that the existing condition of a levee is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the commission to remedy or prevent such property damage or economic loss will result in unreasonable delay, the commission may issue an emergency order, either mandatory or prohibitory in nature, directing the owner of the levee to repair, modify, maintain, dewater, or remove the levee which the commission determines is unsafe. The emergency order may be issued without notice to the levee owner or with notice the commission considers practicable under the circumstances.*

(e) *If the commission issues an emergency order under authority of this section without notice to the levee owner, the commission shall fix a time and place for a hearing, to be held as soon as practicable but not later than 20 days after the emergency order is authorized, to affirm, modify, or set aside the emergency order. If the nature of the commission's action requires further proceedings, those proceedings shall be conducted, as appropriate, under Chapter 2001, Government Code.*

(f) *Nothing in this section or in rules or orders adopted by the commission shall be construed to relieve an owner or operator of a levee of the legal duties, obligations, or liabilities incident to ownership or operation.*

(g) Any person who violates any provision of *Subsection (a)* of this section is guilty of a *Class C* misdemeanor and upon conviction is punishable by a fine of not more than \$1,000 [\$100]. A separate offense is committed each day a structure constructed in violation of this section is maintained.

~~(h) Subsection (a) of this [e] At the request of the executive director, the attorney general shall file suit in a district court of Travis County to enjoin any violation or threatened violation of this section. In the suit, the attorney general may seek to have the illegal levee or other improvement removed and the preexisting conditions restored and may also collect civil penalties of up to \$100 a day for each day a violation occurs.~~

~~[(d) This] section does not apply to:~~

~~(1) any dam, reservoir, or canal system associated with a water right issued or recognized by the commission [dams permitted by the commission or recognized as valid by final decree in any proceeding begun under Subchapter G, Chapter 11, of this code];~~

(2) dams authorized by Section 11.142 of this code;

(3) a levee or other improvement within the corporate limits of a city or town provided: (a) plans for the construction or maintenance or both must be approved by the city or town as a condition precedent to starting the project and (b) the city or town requires that such plans be in substantial compliance with rules and standards adopted by the commission; ~~[or]~~

(4) a levee or other improvement within the boundaries of any political subdivision which has qualified for the National Flood Insurance Program as authorized by the National Flood Insurance Act of 1968 (Title 42, U.S.C., Sections 4001–4127) provided: (a) plans for the construction or maintenance or both must be approved by the political subdivision which is participating in the national flood insurance program as a condition precedent to starting the project and (b) the political subdivision requires that such plans be in substantial compliance with rules and standards adopted by the commission;

(5) projects implementing soil and water conservation practices set forth in a conservation plan with a landowner or operator and approved by the governing board of a soil and water conservation district organized under the State Soil Conservation Law, as amended (Article 165a–4, Vernon's Texas Civil Statutes), provided that the governing board finds the practices do not significantly affect stream flooding conditions on, along, or near a state stream; *or*

(6) *any levee or other improvement constructed outside of the 100-year floodway. For the purposes of this section, "100-year floodway" is defined as the channel of a stream and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation prior to encroachment.*

(i) ~~[(e)]~~ On projects located within the corporate limits of a city or town or within the boundaries of any political subdivision which are exempt from the provisions of *Subsection (a)* of this section by Subdivision (3) or (4) of *Subsection (h)* of this section ~~[(d) above]~~, any person whose property is located outside of the corporate limits of such city or town or of the boundaries of such a political subdivision and whose property is affected or potentially affected by the effect of the project on the floodwaters of the stream may appeal the decision of such political subdivision. The appeal shall be in writing and shall specify the grounds therefor and a copy shall be sent by certified mail to the project applicant and to the city or town or such political subdivision. The timely filing of such an appeal with the executive director suspends the decision of the city or town or political subdivision until a final decision is rendered by the commission. The executive director shall review the complaint and investigate the facts surrounding the nature of the complaint. If the executive director finds that the complaint is frivolous or nonmeritorious or made solely for purposes of harassment or delay, then he shall dismiss the appeal. Otherwise, the executive director shall refer the appeal to the commission which shall after due notice hold a hearing to determine whether the project should be approved using the standards established by the commission and shall hear such appeal de novo under the procedural rules established by the commission for other reclamation projects.

SECTION 3.06. Subchapter G, Chapter 16, Water Code, is amended by adding Section 16.237 to read as follows:

Sec. 16.237. ADMINISTRATIVE PENALTY: CIVIL REMEDY. (a) If a person violates a commission rule or order adopted under Section 16.236 of this code, the commission may assess an administrative penalty against that person as provided by Section 11.0842 of this code.

(b) Nothing in this chapter affects the right of any private corporation, individual, or political subdivision that has a justiciable interest in pursuing any available common-law remedy to enforce a right or to prevent or seek redress or compensation for the violation of a right or otherwise redress an injury.

ARTICLE 4. SURFACE WATER AND GROUNDWATER SUPPLIES

SECTION 4.01. Section 11.134, Water Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply;

(3) the proposed appropriation:

(A) *is intended for a [contemplates the application of water to any] beneficial use;*

(B) *does not impair existing water rights or vested riparian rights; [and]*

(C) *is not detrimental to the public welfare; [and]*

(D) *considers the effects of any hydrological connection between surface water and groundwater; and*

(E) *addresses a water supply need in a manner that is consistent with the state water plan and an approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and*

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Subdivision (8)(B), Section 11.002, of this code.

(c) *Beginning September 1, 2001, the commission may not issue a water right for municipal purposes in a region that does not have an approved regional water plan in accordance with Section 16.053(i) of this code unless the commission determines that conditions warrant waiver of this requirement.*

SECTION 4.02. Subchapter D, Chapter 11, Water Code, is amended by adding Sections 11.1501 and 11.151 to read as follows:

Sec. 11.1501. CONSIDERATION AND REVISION OF PLANS. In considering an application for a permit to store, take, or divert surface water, or for an amendment to a permit, certified filing, or certificate of adjudication, the commission shall consider the state water plan and any approved regional water plan for the area or areas in which the water is proposed to be stored, diverted, or used.

Sec. 11.151. EFFECTS OF PERMITS ON GROUNDWATER. In considering an application for a permit to store, take, or divert surface water, the commission shall consider the effects, if any, on groundwater or groundwater recharge.

SECTION 4.03. Section 11.153, Water Code, is amended by amending the section heading and Subsections (a) and (d) to read as follows:

Sec. 11.153. [PILOT] PROJECTS FOR STORAGE OF APPROPRIATED WATER IN AQUIFERS. (a) The commission shall investigate the feasibility of storing appropriated water in various types of aquifers around the state by encouraging the issuance of temporary or term permits for [pilot] demonstration projects for the storage of appropriated water for subsequent retrieval and beneficial use ~~[in the following aquifers in the specified counties:~~

~~[(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County and Medina County;~~

~~[(2) the Carrizo Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt counties;~~

~~[(3) the Hickory and Ellenberger aquifers in Gillespie County; and~~

~~[(4) the Gulf Coast aquifer in Cameron and Hidalgo counties].~~

(d) *The commission shall only issue a [A] final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use where completed pilot projects or historically demonstrated projects have been shown to be feasible under the criteria provided in Sections 11.154(c) and (d)[, other than for the pilot projects authorized by this section, may not be issued before June 1, 1999].*

SECTION 4.04. Subsections (a), (b), (c), and (e), Section 11.154, Water Code, are amended to read as follows:

(a) An application filed with the commission to undertake a [pilot] project under Section 11.153 must include:

(1) the information required for an application for a permit or permit amendment to appropriate state water;

(2) all information required for an application for a permit for a Class V injection well without requiring a separate hearing or notice; and

(3) a map or plat showing the injection facility and the aquifer in which the water will be stored.

(b) If the application is for a permit or permit amendment to store appropriated water in a *groundwater [an underground water] reservoir or a subdivision of a groundwater [an underground water] reservoir, as defined by Chapter 36 [52], that is under the jurisdiction of a groundwater [an underground water] conservation district:*

(1) the applicant shall:

(A) provide a copy of the application to each *groundwater [underground water]* conservation district that has jurisdiction over the reservoir or subdivision;

(B) cooperate with *each district [the districts]* that *has [have]* jurisdiction over the reservoir or subdivision to ensure compliance with the rules of each district;

(C) cooperate with each district that has jurisdiction over the reservoir or subdivision to develop rules regarding the injection, storage, and withdrawal of appropriated water stored in the aquifer; and

(D) comply with the rules governing the injection, storage, *and [or]* withdrawal of appropriated water stored in the reservoir or subdivision that are adopted by *each [a]* district that has jurisdiction over the reservoir or subdivision; and

(2) the commission shall require that any agreement the applicant reaches with a district that has jurisdiction over the reservoir or subdivision regarding the terms for the injection, storage, and withdrawal of appropriated water be included as a condition of the permit or permit amendment.

(c) On ~~[completion of a pilot project and]~~ receipt of an [appropriate] application for a permit or an amendment to an existing permit *from an applicant with a completed pilot or historically demonstrated project*, the commission shall evaluate the success of the [pilot] project for purposes of issuing a final order granting a permit or permit amendment authorizing the storage of appropriated water incident to a beneficial use. The commission shall consider whether:

(1) the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that the introduction would:

(A) render groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property; or

(B) require treatment of the groundwater to a greater extent than the native groundwater requires before being applied to that beneficial use;

(2) the water stored in the receiving aquifer can be successfully harvested from the aquifer for beneficial use; and

(3) ~~the permit holder has provided evidence that~~ reasonable diligence will be used to protect the water stored in the receiving aquifer from unauthorized withdrawals to the extent necessary to maximize the permit holder's ability to retrieve and beneficially use the stored water without experiencing unreasonable loss of appropriated water.

(e) A permit to store appropriated water in a *groundwater* ~~[an underground water]~~ reservoir or subdivision, as defined by Chapter 36 ~~[52]~~, shall provide as a condition to the permit that the permit holder shall:

(1) register the permit holder's injection and recovery wells with a *groundwater* ~~[an underground water]~~ conservation district that has jurisdiction over the reservoir or subdivision, if any; and

(2) each calendar month, provide the district, if any, with a written report showing for the previous calendar month:

(A) the amount of water injected for storage; and

(B) the amount of water recaptured for use.

SECTION 4.05. Subsection (b), Section 11.155, Water Code, is amended to read as follows:

(b) The board shall make other studies, investigations, and surveys of the aquifers in the state as it considers necessary to determine the occurrence, quantity, quality, and availability of other aquifers in which water may be stored and subsequently retrieved for beneficial use. The board shall undertake the studies, investigations, and surveys in the following order of priority:

(1) the aquifers *described* ~~[identified]~~ in Section 11.153(a);

(2) areas designated by the commission as "*priority groundwater management* ~~[critical]~~ areas" under Section 35.008 ~~[52.053]~~; and

(3) other areas of the state in a priority to be determined by the board's ranking of where the greatest need exists.

SECTION 4.06. Subsection (b), Section 11.173, Water Code, is amended to read as follows:

(b) A permit, certified filing, or certificate of adjudication or a portion of a permit, certified filing, or certificate of adjudication is exempt from cancellation under Subsection (a) of this section:

(1) to the extent of the owner's participation in the Conservation Reserve Program authorized by the Food Security Act, Pub.L. No. 99-198, Secs. 1231-1236, 99 Stat. 1354, 1509-1514 (1985) or a similar governmental program; or

(2) if any portion of the water authorized to be used pursuant to a permit, certified filing, or certificate of adjudication has been used in accordance with a *regional water* ~~[management]~~ plan approved *pursuant to Section 16.053 of this code* ~~[by the commission]~~.

SECTION 4.07. Subdivision (6), Section 15.001, Water Code, is amended to read as follows:

(6) "Project" means:

(A) any undertaking or work, *including planning activities and work to obtain regulatory authority at the local, state, and federal level*, to conserve, convey, and develop ~~[surface or subsurface]~~ water resources in the state, to provide for the maintenance and enhancement of the quality of the water of the state, to provide nonstructural and structural flood control, drainage, subsidence control, recharge, chloride control, brush control, precipitation enhancement, and desalinization, *to provide for the acquisition of water rights and the repair of unsafe dams*, and to carry out other purposes defined by board rules; ~~[or]~~

(B) any undertaking or work outside the state to provide for the maintenance and enhancement of the quality of water by eliminating saline inflow through well pumping and deep well injection of brine; or

(C) any undertaking or work by Texas political subdivisions or institutions of higher education to conserve, convey, and develop water resources in areas outside Texas or to provide for the maintenance and enhancement of the quality of the water in areas adjoining Texas, if such undertaking or work will result in water being available for use in or for the benefit of Texas or will maintain and enhance the quality of water in Texas.

SECTION 4.08. Subsection (b), Section 15.002, Water Code, is amended to read as follows:

(b) The legislature finds that the conventional means of financing projects are inadequate to meet current and anticipated needs of the state. Therefore, it is the further intent of the legislature to provide a means of coordinating the development of projects ~~[throughout the state]~~ through the board and to provide political subdivisions the maximum opportunity to finance projects through programs provided by this chapter. *Projects may be in the state or outside the state, provided that out-of-state projects must be funded through a Texas political subdivision or an institution of higher education and must result in water being available for use in or for the benefit of Texas or maintain and enhance the quality of water in Texas.*

SECTION 4.09. Section 17.895, Water Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The board or lender districts may make conservation loans for capital equipment or materials, labor, preparation costs, and installation costs:

(1) to improve water use efficiency of water delivery and application on existing irrigation systems;

(2) for preparing irrigated land to be converted to dryland conditions; ~~[or]~~

(3) for preparing dryland for more efficient use of natural precipitation;

(4) *for preparing and maintaining land to be used for brush control activities, including but not limited to activities conducted pursuant to Chapter 203, Agriculture Code; or*

(5) *for implementing precipitation enhancement activities in areas of the state where such activities would be, in the board's judgment, most effective.*

(c) *The board may make conservation loans to borrower districts for the cost of purchasing and installing devices, on public or private property, designed to indicate the amount of water withdrawn for irrigation purposes.*

SECTION 4.10. Subdivision (12), Section 35.002, Water Code, is amended to read as follows:

(12) *"Priority groundwater management [Critical] area" means an area designated and delineated by the commission as an area that is experiencing or is expected to experience critical groundwater problems.*

SECTION 4.11. Section 35.007, Water Code, is amended to read as follows:

Sec. 35.007. IDENTIFYING, DESIGNATING, AND DELINEATING PRIORITY GROUNDWATER MANAGEMENT [CRITICAL] AREAS. (a) The executive director and the executive administrator shall meet at least once a year to identify, *based on information gathered by the commission and the Texas Water Development Board*, those areas of the state that are experiencing or that are expected to experience, ~~[based on information available to the commission and the Texas Water Development Board]~~ within the immediately following 25-year ~~[20-year]~~ period, critical groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies.

(b) If the executive director concludes that an area of the state should be considered for designation as a *priority groundwater management [critical]* area, the executive director shall prepare a report to the commission.

(c) *Before the executive director requests a study from the executive administrator under Subsection (d), the executive director shall provide notice to the persons listed in Section 35.009(c) of areas being considered for identification as experiencing or expected to experience critical groundwater problems and shall consider any information or studies submitted under this subsection. Not later than the 45th day after the date of the notice, a person*

required to receive notice under this subsection may submit to the executive director information or studies that address the potential effects on an area of being identified as experiencing or expected to experience critical groundwater problems.

(d) The executive director shall begin preparation of a *priority groundwater management* [critical] area report by requesting a study from the executive administrator. The study must:

(1) include an appraisal of the hydrogeology of the area and matters within the Texas Water Development Board's planning expertise relevant to the area;

(2) *assess the area's immediate, short-term, and long-term water supply and needs; and*

(3) [~~The study must~~] be completed and delivered to the executive director on or before the 180th [90th] day following the date of the request. If the study is not delivered within this 180-day [90-day] period, the executive director may proceed with the preparation of the report.

(e) *The executive director shall request a study from the executive director of the Parks and Wildlife Department for the purpose of preparing the report required by this section. The study must:*

(1) *evaluate the potential effects of the designation of a priority groundwater management area on an area's natural resources; and*

(2) *be completed and delivered to the executive director on or before the 180th day following the date of the request. If the study is not delivered within this 180-day period, the executive director may proceed with the preparation of the report.*

(f) [(d)] The report shall include:

(1) the recommended delineation of the boundaries of any proposed *priority groundwater management* [critical] area in the form of an order [~~a rule~~] to be considered for adoption by the commission;

(2) the reasons and supporting information for or against designating the area as a *priority groundwater management* [critical] area;

(3) a recommendation regarding whether a district should be created in the *priority groundwater management* [critical] area or whether the *priority groundwater management* [critical] area should be added to an existing district;

(4) a recommendation as to actions that should be considered to conserve natural resources;

(5) an evaluation of information or studies submitted to the executive director under Subsection (c); and

(6) any other information that the executive director considers helpful to the commission.

(g) [(e)] The executive director must complete the report and file it with the commission on or before the 240th [210th] day following the date on which the executive administrator was requested to produce a study. The executive director shall make the report available for public inspection by providing a copy of the report to at least one public library and the county clerk's office in each county in which the proposed *priority groundwater management* [critical] area is located and to all districts adjacent to the area of the proposed *priority groundwater management* area.

(h) [(f)] To carry out this section, the executive director may make necessary studies, hold hearings, solicit and collect information, and use information already prepared by the executive director or the executive administrator for other purposes.

SECTION 4.12. Section 35.008, Water Code, is amended to read as follows:

Sec. 35.008. PROCEDURES FOR DESIGNATION OF PRIORITY GROUNDWATER MANAGEMENT AREA; CONSIDERATION OF CREATION OF DISTRICT OR ADDITION OF LAND IN PRIORITY GROUNDWATER MANAGEMENT AREA TO EXISTING DISTRICT [CRITICAL AREAS]. (a) The commission shall designate *priority groundwater management* [critical] areas using the procedures provided by this chapter in lieu of those provided by [~~applicable to rulemaking under the Administrative Procedure Act,~~] Subchapter B, Chapter 2001, Government Code[, but if procedures required by this chapter are in conflict with that Act, this chapter controls].

(b) *The commission shall call an evidentiary hearing to consider:*

- (1) *the designation of a priority groundwater management area;*
- (2) *whether a district should be created over all or part of a priority groundwater management area; or*
- (3) *whether all or part of the land in the priority groundwater management area should be added to an existing district.*

(c) *Evidentiary hearings shall be held at a location in one of the counties in which the priority groundwater management area is located, or proposed to be located, or in the nearest convenient location if adequate facilities are not available in those counties.*

(d) *At the hearing, the commission shall hear testimony and receive evidence from affected persons. The commission shall consider the executive director's report and supporting information and the testimony and evidence received at the hearing. If the commission considers further information necessary, the commission may request such information from any source.*

(e) *The designation of a priority groundwater management [critical] area may not be appealed nor may it be challenged under the Administrative Procedure Act, Section 2001.038, Government Code.*

SECTION 4.13. Section 35.009, Water Code, is amended to read as follows:

Sec. 35.009. NOTICE AND HEARING. (a) ~~The [In addition to the notice required for rulemaking under the Administrative Procedure Act, Section 2001.023, Government Code, the] commission shall have notice of the hearing published in at least one newspaper with general circulation in the county or counties in which the area proposed for designation as a priority groundwater management [critical] area or the area within a priority groundwater management area being considered for district creation or for addition to an existing district is [to be] located. Notice must be published not later than the 30th day before the date set for the commission to consider the designation of the priority groundwater management [critical] area, the creation of a district in a priority groundwater management area, or the addition of land in a priority groundwater management area to an existing district.~~

(b) *The notice must include:*

- (1) *if applicable, a statement of the general purpose and effect of designating the proposed priority groundwater management area [critical areas];*
- (2) *if applicable, a statement of the general purpose and effect of creating a district in the priority groundwater management area;*
- (3) *if applicable, a statement of the general purpose and effect of adding all or part of the land in the priority groundwater management area to an existing district;*
- (4) *a map generally outlining the boundaries of the area being considered for priority groundwater management [proposed critical] area designation or the priority groundwater management area being considered for district creation or for addition to an existing district, or notice of the location at which a copy of the map may be examined or obtained;*
- (5) *a statement that the executive director's report concerning the priority groundwater management area or proposed area is available at the commission's main office in Austin, Texas, and at regional offices of the commission for regions which include territory within the priority groundwater management area or proposed priority groundwater management area and that the report is available for inspection during regular business hours;*
- (6) ~~[(3)]~~ *a description or the name of the locations in the affected area at which the commission has provided copies of the executive director's report to be made available for public inspection;*
- (7) *the name and address of each public library, each county clerk's office, and each district to which the commission has provided copies of the executive director's report; and*
- (8) ~~[(4)]~~ *the date, time, and place of the hearing [at which the commission will consider the designation of the critical areas].*

(c) *The commission shall also give written notice of the date, time, place, and purpose of the hearing to the governing body of each county, regional water planning group, adjacent groundwater district, municipality, river authority, water district, or other entity which*

supplies public drinking water, including each holder of a certificate of convenience and necessity issued by the commission, and of each irrigation district, located either in whole or in part in the priority groundwater management area or proposed priority groundwater management area. The notice must be given before the 30th day preceding the date set for the hearing.

SECTION 4.14. Subsections (b), (c), (d), and (e), Section 35.012, Water Code, are amended to read as follows:

(b) If the commission finds that the land and other property in the *priority groundwater management* [critical] area would benefit from the creation of one or more districts, that there is a public need for one or more districts, and that the creation of one or more districts would further the public welfare, the commission shall issue an order stating that the creation of one or more districts is needed.

(c) *Following* [During the period between] the [date of] issuance of a commission order under Subsection (b) [and one year after the close of the next regular session of the legislature following the issuance of the order], the landowners in the *priority groundwater management* [critical] area may:

- (1) create one or more districts under Subchapter B, Chapter 36;
- (2) have the area annexed to a district that adjoins the area; or
- (3) create one or more districts through the legislative process.

(d) The commission shall identify the areas subject to the order of the commission issued under Subsection (b) that have not[, in the period provided by Subsection (c),] been incorporated into a district[, and shall delineate proposed boundaries of a district to include those areas. If the commission proposes the creation of one or more districts, the Texas Agricultural Extension Service [commission] shall begin an educational program within such areas with the assistance and cooperation of the Texas Water Development Board, the commission, other state agencies, and existing districts to inform the residents of the status of the area's water resources and management options including possible formation of a district, before beginning the procedures for creation of a district provided in Subchapter B, Chapter 36.

(e) If the commission fails to find that the district would be a benefit to the land and other property within the *priority groundwater management* [critical] area, that there is a public need for the district, or that creation of the district will further the public welfare, the commission shall issue an order stating that a district should not be created within the boundaries of the *priority groundwater management* [critical] area.

SECTION 4.15. Section 35.013, Water Code, is amended to read as follows:

Sec. 35.013. **ADDING PRIORITY GROUNDWATER MANAGEMENT [CRITICAL] AREA TO EXISTING DISTRICT.** (a) If land in a *priority groundwater management* [critical] area is located adjacent to one or more existing districts, the commission, instead of issuing an order under Section 35.012, may issue an order recommending that the *priority groundwater management* [critical] area be added to the existing district designated by the commission. In its order, the commission must find that the land and other property in the *priority groundwater management* [critical] area and the land in the existing district will benefit from the addition of the area, that there is a public need to add the *priority groundwater management* [critical] area to the existing district, and that the addition of the land to the existing district would further the public welfare.

(b) If the executive director recommends that the *priority groundwater management* [critical] area be added to an existing district or if the commission considers it possible to add the *priority groundwater management* [critical] area to an adjacent existing district, the commission shall give notice to the board of the existing district recommended by the executive director or considered by the commission to possibly serve the area and to any other existing districts adjacent to the *priority groundwater management* [critical] area.

(c) The commission shall submit a copy of the order to the board of the district to which it is recommending the *priority groundwater management* [critical] area be added. The board shall vote on the addition of the *priority groundwater management* [critical] area to the district and shall advise the commission of the outcome.

(d) If the board votes to accept the addition of the *priority groundwater management* [critical] area to the district, the board:

(1) *may request the Texas Agricultural Extension Service, the commission, the Texas Water Development Board, and other state agencies to administer an educational program to inform the residents of the status of the area's water resources and management options including possible annexation into a district;*

(2) shall call an election within the *priority groundwater management* [critical] area as delineated by the commission to determine if the *priority groundwater management* [critical] area will be added to the district; and

(3) [~~In the order calling the election, the board~~] shall designate election precincts and polling places for the elections *in the order calling an election under this subsection.*

(e) The board shall give notice of the election and the proposition to be voted on. The board shall publish notice of the election at least one time in one or more newspapers with general circulation within the boundaries of the *priority groundwater management* [critical] area. The notice must be published before the 30th day preceding the date set for the election.

(f) The ballots for the election shall be printed to provide for voting for or against the proposition: "The inclusion of _____ (briefly describe *priority groundwater management* [critical] area) in the _____ District." If the district has *outstanding debts or taxes* [~~issued bonds~~], the proposition shall include the following language: "and assumption by the described area of a proportional share of the *debts or taxes* [~~outstanding indebtedness~~] of the district."

(g) Immediately after the election, the presiding judge of each polling place shall deliver the returns of the election to the board, and the board shall canvass the returns for the election within the *priority groundwater management* [critical] area and declare the results. If a majority of the voters in the *priority groundwater management* [critical] area voting on the proposition vote in favor of the proposition, the board shall declare that the *priority groundwater management* [critical] area is added to the district. If a majority of the voters in the *priority groundwater management* [critical] area voting on the proposition vote against adding the *priority groundwater management* [critical] area to the district, the board shall declare that the *priority groundwater management* [critical] area is not added to the district. The board shall file a copy of the election results with the commission.

(h) If the voters approve adding the *priority groundwater management* [critical] area to the district, the board of the district to which the *priority groundwater management* [critical] area is added shall provide reasonable representation on that board compatible with the district's existing scheme of representation.

(i) If the proposition is defeated, another election to add the *priority groundwater management* [critical] area to an existing district may not be called before the first anniversary of the date on which the election on the proposition was held.

SECTION 4.16. Subsections (b) and (c), Section 35.014, Water Code, are amended to read as follows:

(b) The costs of an election to add a *priority groundwater management* [critical] area to an existing district at which the voters approve adding the *priority groundwater management* [critical] area to the district shall be paid by the existing district.

(c) The costs of an election to create a district or add a *priority groundwater management* [critical] area to an existing district at which the proposition fails shall be paid by the commission.

SECTION 4.17. Section 35.015, Water Code, is amended to read as follows:

Sec. 35.015. STATE ASSISTANCE. [~~(a) A political subdivision located in or that has within its boundaries an area or part of an area delineated as a critical area, and in which the qualified voters fail to approve the creation of a district or to join an existing district, shall not be eligible to receive any financial assistance from the state under Chapter 15, 16, or 17 for use within that portion of the critical area not covered by a district.~~]

[~~(b)~~] A political subdivision located in an area delineated as a *priority groundwater management* [critical] area, and in which qualified voters approve the creation of a district or

annexation into an existing district, shall be given consideration to receive financial assistance from the state under Chapter 17 for funds to be used in addressing issues identified in the *priority groundwater management [critical]* area report in the manner provided by Sections 17.124 and 17.125[~~except that the board is not required to make the finding set out in Section 17.125(a)(2)~~].

SECTION 4.18. Section 35.017, Water Code, is amended to read as follows:

Sec. 35.017. STATE-OWNED LAND. If state-owned land or a portion of state-owned land is located in a *priority groundwater management [critical]* area, the state agency that has management and control over that land under the constitution or by statute may elect by written agreement with the commission and the district to include the state-owned land in the district. The agreement shall be entered into as provided by the Texas Intergovernmental Cooperation Act, Chapter 741, Government Code, and may include provisions for the payment by the state agency of reasonable fees to the district. If the state does not elect to enter into the agreement to include the state-owned land in the district, the state agency must establish a groundwater management plan that will conserve, protect, and prevent the waste of groundwater on that state-owned land.

SECTION 4.19. Chapter 35, Water Code, is amended by adding Sections 35.018 and 35.019 to read as follows:

Sec. 35.018. REPORTS. (a) *No later than January 31 of each odd-numbered year, the commission in conjunction with the Texas Water Development Board shall prepare and deliver to the governor, the lieutenant governor, and the speaker of the house of representatives a comprehensive report concerning activities during the preceding two years relating to the designation of priority groundwater management areas by the commission and the creation and operation of districts.*

(b) *The report must include:*

(1) *the names and locations of all priority groundwater management areas and districts created or attempted to be created on or after November 5, 1985, the effective date of Chapter 133 (H.B. No. 2), Acts of the 69th Legislature, Regular Session, 1985;*

(2) *the authority under which each priority groundwater management area and district was proposed for creation;*

(3) *a detailed analysis of each election held to confirm the creation of a district, including analysis of election results, possible reasons for the success or failure to confirm the creation of a district, and the possibility for future voter approval of districts in areas in which attempts to create districts failed;*

(4) *a detailed analysis of the activities of each district created, including those districts which are implementing management plans certified under Section 36.1072;*

(5) *a report on audits performed on districts under Section 36.302 and remedial actions taken under Section 36.303;*

(6) *recommendations for changes in this chapter and Chapter 36 that will facilitate the creation of priority groundwater management areas and the creation and operation of districts;*

(7) *a report on educational efforts in newly designated priority groundwater management areas; and*

(8) *any other information and recommendations that the commission considers relevant.*

(c)(1) *If voters fail to create a groundwater district in a priority groundwater management area or if voters fail to add the priority groundwater management area to an existing groundwater district, the report shall include recommendations for the future management of the priority groundwater management area. The recommendations may include but are not limited to the following:*

(A) *creation of a groundwater district by the legislature;*

(B) *annexation of a priority groundwater management area into an existing district by the legislature; or*

(C) management of the priority groundwater management area by the nearest regional office of the commission. The commission may be authorized to:

- (i) adopt spacing and annual per acre pumping restrictions;
- (ii) issue well permits in accordance with Sections 36.113 and 36.1131;
- (iii) prevent waste and protect the quality of groundwater in accordance with Sections 36.001(8)(A)–(G);
- (iv) levy administrative penalties for violations; and
- (v) collect fees in accordance with Sections 36.206(a) and (b).

(2) If the commission is required by the legislature to manage the priority groundwater management area, a new election may not be called for three years from the date of the last election.

Sec. 35.019. WATER AVAILABILITY. (a) The commissioners court of a county in a priority groundwater management area may adopt water availability requirements in an area where platting is required if the court determines that the requirements are necessary to prevent current or projected water use in the county from exceeding the safe sustainable yield of the county's water supply.

(b) The commissioners court of a county in a priority groundwater management area may:

(1) require a person seeking approval of a plat required by Subchapter A, Chapter 232, Local Government Code, to show:

(A) compliance with the water availability requirements adopted by the court under this section; and

(B) that an adequate supply of water of sufficient quantity and quality is available to supply the number of lots proposed for the platted area;

(2) adopt standards or formulas to determine whether an adequate water supply exists for the platted area; and

(3) adopt procedures for submitting the information necessary to determine whether an adequate water supply exists for the platted area.

(c) The water availability requirements established by a commissioners court under this section may require that:

(1) a person seeking approval of a plat or attempting to sell a lot in a subdivision:

(A) notify a purchaser of a lot in the subdivision if an approved water supply for the subdivision does not exist; or

(B) if the person attempts to build a water supply system to serve one or more lots within the subdivision:

(i) comply with federal, state, and local law; and

(ii) establish an entity to construct and operate the system; or

(2) a planned or operating water supply system serving one or more lots within a subdivision be built and operated in compliance with federal, state, and local laws and rules related to public drinking water.

SECTION 4.20. Section 36.001, Water Code, is amended by amending Subdivision (14) and adding Subdivisions (16) and (17) to read as follows:

(14) "Priority groundwater management [~~Critical~~] area" means an area designated and delineated by the commission under Chapter 35 as an area experiencing or expected to experience critical groundwater problems.

(16) "Loan fund" means the groundwater district loan assistance fund created under Section 36.371.

(17) "Applicant" means a newly confirmed district applying for a loan from the loan fund.

SECTION 4.21. Subchapter A, Chapter 36, Water Code, is amended by adding Section 36.0015 to read as follows:

Sec. 36.0015. PURPOSE. In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter. Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management.

SECTION 4.22. Subsection (c), Section 36.012, Water Code, is amended to read as follows:

(c) The boundaries of a district must be coterminous with or inside the boundaries of a management area or a *priority groundwater management* ~~[critical]~~ area.

SECTION 4.23. Subsection (d), Section 36.013, Water Code, is amended to read as follows:

(d) If a part of the proposed district is not included within either a management area or a *priority groundwater management* ~~[critical]~~ area, the petition to create a district may also contain a request to create a management area. A request to create a management area must comply with the requirements for a petition in Section 35.005, and may be acted on by the commission separately from the petition to create the district.

SECTION 4.24. Subchapter B, Chapter 36, Water Code, is amended by adding Section 36.0151 to read as follows:

Sec. 36.0151. CREATION OF DISTRICT FOR PRIORITY GROUNDWATER MANAGEMENT AREA. (a) If the commission proposes that a district be created under Section 35.012(d), it shall in its order creating the district provide that temporary directors be appointed under Section 36.016 and that an election be called by the temporary directors to confirm the creation of the district and to elect permanent directors.

(b) The commission shall notify the county commissioners court of each county with territory in the district of the district's creation as soon as practicable after issuing the order creating the district.

SECTION 4.25. Section 36.016, Water Code, is amended to read as follows:

Sec. 36.016. APPOINTMENT OF TEMPORARY DIRECTORS. (a) If the commission grants a petition to create a district under Section 36.015 or after the commission dissolves a district's board under Section 36.303, it shall appoint five temporary directors.

(b) If the commission creates a district under Section 36.0151, the county commissioners court or courts of the county or counties that contain the area of the district shall, within 90 days after receiving notification by the commission under Section 36.0151(b), appoint five temporary directors, or more if the district contains the territory of more than five counties, for the district's board using the method provided by Section 36.0161. A county commissioners court shall not make any appointments after the expiration of the 90-day period. If fewer than five temporary directors have been appointed at the expiration of the period, the commission shall appoint additional directors so that the board has at least five members.

(c) Temporary directors appointed under this section [who] shall serve until the initial directors are elected and have qualified for office or until the voters fail to approve the creation of the district.

(d) [(b)] If an appointee of the commission or of a county commissioners court fails to qualify or if a vacancy occurs in the office of temporary director, the commission or the county commissioners court, as appropriate, shall appoint an individual to fill the vacancy.

(e) [(e)] As soon as all temporary directors have qualified, the directors shall meet, take the oath of office, and elect a chairman and vice chairman from among their membership. The chairman shall preside at all meetings of the board and, in the chairman's absence, the vice chairman shall preside.

SECTION 4.26. Subchapter B, Chapter 36, Water Code, is amended by adding Section 36.0161 to read as follows:

Sec. 36.0161. METHOD FOR APPOINTING TEMPORARY DIRECTORS FOR DISTRICT IN PRIORITY GROUNDWATER MANAGEMENT AREA. (a) *If a district in a priority groundwater management area is:*

(1) *contained within one county, the county commissioners court of that county shall appoint five temporary directors for the district;*

(2) *contained within two counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointments of the three remaining directors to be apportioned as provided by Subsection (b);*

(3) *contained within three counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointments of the two remaining directors to be apportioned as provided by Subsection (b);*

(4) *contained within four counties, the county commissioners court of each county shall appoint at least one temporary director, with the appointment of the remaining director to be apportioned as provided by Subsection (b); or*

(5) *contained within five or more counties, the county commissioners court of each county shall appoint one temporary director.*

(b)(1) *In this subsection, "estimated groundwater use" means the estimate of groundwater use in acre-feet developed by the commission under Subsection (c) for the area of a county that is within the district.*

(2) *The apportionment of appointments under Subsection (a) shall be made by the commission so as to reflect, as closely as possible, the proportion each county's estimated groundwater use bears to the sum of the estimated groundwater use for the district as determined under Subsection (c). The commission shall by rule determine the method it will use to implement this subdivision.*

(c) *If a district for which temporary directors are to be appointed is contained within two, three, or four counties, the commission shall develop an estimate of annual groundwater use in acre-feet for each county area within the district.*

SECTION 4.27. Section 36.052, Water Code, is amended to read as follows:

Sec. 36.052. OTHER LAWS NOT APPLICABLE. (a) *Other laws governing the administration or operations of districts created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, shall not apply to any district governed by this chapter. This chapter prevails over any other law in conflict or inconsistent with this chapter, except any special law governing a specific district shall prevail over this chapter.*

(b) *Notwithstanding Subsection (a), the following provisions prevail over a conflicting or inconsistent provision of a special law that governs a specific district:*

(1) *Section 36.107–36.108;*

(2) *Section 36.159–36.161; and*

(3) *Subchapter I.*

SECTION 4.28. Subchapter D, Chapter 36, Water Code, is amended by amending Section 36.107 and adding Sections 36.1071, 36.1072, and 36.1073 to read as follows:

Sec. 36.107. RESEARCH [AND PLANNING]. [(a)] *A district may carry out any research projects deemed necessary by the board.*

Sec. 36.1071. MANAGEMENT PLAN. (a) [(b)] *Following notice and hearing, the district shall, in coordination with surface water management entities on a regional basis, develop a comprehensive management plan which addresses the following management goals, as applicable:*

(1) *providing the most efficient use of groundwater;*

(2) *controlling and preventing waste of groundwater;*

(3) *controlling and preventing subsidence;*

(4) *addressing conjunctive surface water management issues; and*

(5) *addressing natural resource issues.*

(b) A district management plan, or any amendments to a district management plan, adopted after the Texas Water Development Board approval of a regional water plan for the region in which the district is located shall be consistent with the regional water plan.

(c) The commission and the Texas Water Development Board shall provide technical assistance to a district in the development of the management plan required under Subsection (a) which may include, if requested by the district, a preliminary review and comment on the plan prior to final approval by the board. If such review and comment by the commission is requested, the commission shall provide comment not later than 30 days from the date the request is received.

(d) The commission shall provide technical assistance to a district during its initial operational phase.

(e) In the management plan described under Subsection (a), the district shall:

(1) identify the performance standards and management objectives under which the district will operate to achieve the management goals identified under Subsection (a);

(2) specify, in as much detail as possible, the actions, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules;

(3) include estimates of the following:

(A) the existing total usable amount of groundwater in the district;

(B) the amount of groundwater being used within the district on an annual basis;

(C) the annual amount of recharge, if any, to the groundwater resources within the district and how natural or artificial recharge may be increased; and

(D) the projected water supply and demand for water within the district; and

(4) address water supply needs in a manner that is not in conflict with the appropriate approved regional water plan if a regional water plan has been approved under Section 16.053 [for the most efficient use of the groundwater, for controlling and preventing waste of groundwater, and for controlling and preventing subsidence. The plan may be reviewed annually but must be reviewed by the board at least once every five years].

(f) [(e) The district shall specify in the management plan, in as much detail as possible, the acts, procedures, performance, and avoidance that are or may be necessary to effect the plan, including specifications and proposed rules.] The district shall adopt rules necessary to implement the management plan.

(g) The board shall adopt amendments to the management plan as necessary. Amendments to the management plan shall be adopted after notice and hearing and shall otherwise comply with the requirements of this section.

Sec. 36.1072. TEXAS WATER DEVELOPMENT BOARD REVIEW AND CERTIFICATION OF MANAGEMENT PLAN. (a) A [The] district shall, not later than two years after the creation of the district or, if the district required confirmation, after the election confirming the district's creation, submit [file a copy of] the management plan required under Section 36.1071 to [and the rules with] the executive administrator for review and certification [commission].

(b) Within 60 days of receipt of a management plan adopted under Section 36.1071, the executive administrator shall certify a management plan if the plan is administratively complete. A management plan is administratively complete when it contains the information required to be submitted under Section 36.1071. The executive administrator may determine that conditions justify waiver of the requirements under Section 36.1071(e)(4).

(c) Once a determination that a management plan is administratively complete has been made:

(1) the executive administrator may not revoke the determination that a management plan is administratively complete;

(2) the executive administrator may request additional information from the district if the information is necessary to clarify, modify, or supplement previously submitted material; and

(3) a request for additional information does not render the management plan incomplete.

(d) A management plan takes effect on certification by the executive administrator or, if appealed, on certification by the Texas Water Development Board.

(e) The board may review the plan annually and must review and readopt the plan with or without revisions at least once every five years.

(f) If the executive administrator does not certify the management plan, the executive administrator shall provide to the district, in writing, the reasons for the action. Not later than the 180th day after the date a district receives notice that its management plan has not been certified, the district may submit a revised management plan for review and certification. The executive administrator's decision may be appealed to the Texas Water Development Board. The decision of the Texas Water Development Board on whether to certify the management plan may not be appealed. The commission shall not take enforcement action against a district under Subchapter I until the later of the expiration of the 180-day period or the date the Texas Water Development Board has taken final action withholding certification of a revised management plan.

Sec. 36.1073. AMENDMENT TO MANAGEMENT PLAN. Any amendment to the management plan shall be submitted to the executive administrator within 60 days following adoption of the amendment by the district's board. The executive administrator shall review and certify any amendment which substantially affects the management plan in accordance with the procedures established under Section 36.1072.

SECTION 4.29. Subsection (a), Section 36.108, Water Code, is amended to read as follows:

(a) If two or more districts are located within the boundaries of the same management area, each district shall prepare a comprehensive management plan as required by Section 36.1071 [36.107] covering that district's respective territory. On completion of the plan, each district shall forward a copy of the new revised management plan to the other districts in the management area.

SECTION 4.30. Section 36.113, Water Code, is amended to read as follows:

Sec. 36.113. PERMITS FOR WELLS. (a) A district shall require permits for the drilling, equipping, or completing of wells[,] or for substantially altering the size of wells or well pumps.

(b) A district shall require that an application for a permit be in writing and sworn to.

(c) A district may require that the following be included in the permit application:

(1) the name and mailing address of the applicant and the owner of the land on which the well will be located;

(2) if the applicant is other than the owner of the property, documentation establishing the applicable authority to construct and operate a well for the proposed use;

(3) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;

(4) a water conservation plan or a declaration that the applicant will comply with the district's management plan;

(5) the location of each well and the estimated rate at which water will be withdrawn;

(6) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission; and

(7) a drought contingency plan.

(d) Before granting or denying a permit, the district shall consider whether:

(1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;

(2) the proposed use of water unreasonably affects existing groundwater and surface water resources;

(3) the proposed use of water is dedicated to any beneficial use;

(4) *the proposed use of water is consistent with the district's certified water management plan;*

(5) *the applicant has agreed to avoid waste and achieve water conservation; and*

(6) *the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.*

(e) Permits may be issued subject to the rules promulgated by the district and subject to terms and provisions with reference to the drilling, equipping, completion, or alteration of wells or pumps that may be necessary to ~~[conserve the groundwater,]~~ prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, lessen interference between wells, or control and prevent subsidence.

(f) *A district may require that changes in the withdrawal and use of groundwater under a permit not be made without the prior approval of a permit amendment issued by the district.*

SECTION 4.31. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.1131 to read as follows:

Sec. 36.1131. ELEMENTS OF PERMIT. (a) A permit issued by the district to the applicant under Section 36.113 shall state the terms and provisions prescribed by the district.

(b) The permit may include:

(1) the name and address of the person to whom the permit is issued;

(2) the location of the well;

(3) the date the permit is to expire if no well is drilled;

(4) a statement of the purpose for which the well is to be used;

(5) a requirement that the water withdrawn under the permit be put to beneficial use at all times;

(6) the location of the use of the water from the well;

(7) a water well closure plan or a declaration that the applicant will comply with well plugging guidelines and report closure to the commission;

(8) the conditions and restrictions, if any, placed on the rate and amount of withdrawal;

(9) any conservation-oriented methods of drilling and operating prescribed by the district;

(10) a drought contingency plan prescribed by the district; and

(11) other terms and conditions as provided by Section 36.113.

SECTION 4.32. Section 36.117, Water Code, is amended to read as follows:

Sec. 36.117. EXEMPTIONS; EXCEPTION; LIMITATIONS. (a) A district may exempt wells from the requirements to obtain a drilling permit, an operating permit, or any other permit required by this chapter or the district's rules. A district may not require a permit for:

(1) drilling or producing from a well either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) the drilling or alteration of the size of a well or to restrict the production of a well if the water produced or to be produced from the well is used or to be used to supply the domestic needs of 10 or fewer households and a person who is a member of each household is either the owner of the well, a person related to the owner or a member of the owner's household within the second degree by consanguinity, or an employee of the owner;

(3) the drilling or alteration of the size of a well or to restrict the production from the well if the water produced or to be produced from the well is used or to be used to provide water for feeding livestock and poultry connected with farming, ranching, or dairy enterprises;

(4) water wells to supply water for hydrocarbon production activities, regardless of whether those wells are producing, that are associated with any well permitted by the Railroad Commission of Texas drilled before September 1, 1985; or

(5) jet wells used for domestic needs.

(b) The board shall adopt rules determining the applicability of Subsection (a)(3) to facilities used primarily for feeding livestock.

(c) The district shall not deny the owner of a tract of land, or his lessee, who has no well equipped to produce more than 25,000 gallons a day on the tract, either a permit to drill a well on his land or the privilege to produce groundwater from his land, subject to the rules of the district.

(d) A district may not restrict the production of any well equipped to produce 25,000 gallons or less a day.

(e) Nothing in this chapter applies to wells drilled for oil, gas, sulphur, uranium, or brine, or for core tests, or for injection of gas, saltwater, or other fluid, or for any other purpose, under permits issued by the Railroad Commission of Texas. A district may not require a *drilling permit for [to drill] a well to supply water for drilling any [of these] wells permitted by the Railroad Commission of Texas. Any well that ceases to be used for these purposes and is then used as an ordinary water well is subject to the rules of the district. Water wells drilled after September 1, 1997, to supply water for hydrocarbon production activities must meet the spacing requirements of the district unless no space is available within 300 feet of the production well or the central injection station.*

(f) Water wells exempted under this section shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(g) A district shall require water wells exempted under this section to be registered with the district *before drilling*. All exempt water wells shall be equipped and maintained so as to conform to the district's rules requiring installation of casing, pipe, and fittings to prevent the escape of groundwater from a groundwater reservoir to any reservoir not containing groundwater and to prevent the pollution or harmful alteration of the character of the water in any groundwater reservoir.

(h) *A well to supply water for a subdivision of land for which a plat approval is required by law is not exempted under this section.*

SECTION 4.33. Subchapter D, Chapter 36, Water Code, is amended by adding Section 36.122 to read as follows:

Sec. 36.122. TRANSFER OF GROUNDWATER OUT OF DISTRICT. (a) A district may promulgate rules requiring a person to obtain a permit from the district for the transfer of groundwater out of the district to:

(1) increase, on or after March 2, 1997, the amount of groundwater to be transferred under a continuing arrangement in effect before that date; or

(2) transfer groundwater out of the district on or after March 2, 1997, under a new arrangement.

(b) The district may impose a reasonable fee for processing an application for a permit under this section.

(c) Before issuing a permit under this section, the district must give notice of the application and hold a public hearing.

(d) In determining whether to issue a permit under this section, the district shall consider:

(1) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;

(2) the availability of feasible and practicable alternative supplies to the applicant;

(3) the amount and purposes of use in the proposed receiving area for which water is needed;

(4) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and

- (5) the approved regional water plan and certified district management plan.
- (e) The district may limit a permit issued under this section if conditions in Subsection (d) warrant the limitation.
- (f) In addition to conditions provided by Section 36.1131, the permit shall specify:
 - (1) the amount of water that may be transferred out of the district; and
 - (2) the period for which the water may be transferred.
- (g) A district may not prohibit the export of groundwater if the purchase was in effect on or before June 1, 1997.
- (h) This section applies only to a transfer of water that is initiated or increased after the effective date of this section.
- (i) A district shall adopt rules as necessary to implement this section.

SECTION 4.34. Subchapter E, Chapter 36, Water Code, is amended by adding Sections 36.159, 36.160, and 36.161 to read as follows:

Sec. 36.159. **GROUNDWATER DISTRICT MANAGEMENT PLAN FUNDS.** The Texas Water Development Board may allocate funds from the water assistance fund to a district to conduct initial data collections under this chapter, to develop and implement a long-term management plan under Section 36.1071, and to participate in regional water plans.

Sec. 36.160. **FUNDS.** The Texas Water Development Board, the commission, the Parks and Wildlife Department, the Texas Agricultural Extension Service, and institutions of higher education may allocate funds to carry out the objectives of this chapter and Chapter 35, which include but are not limited to:

- (1) conducting initial and subsequent studies and surveys under Sections 36.106, 36.107, and 36.109;
- (2) providing appropriate education in affected areas identified in Section 35.007 relating to the problems and issues concerning water management that may arise;
- (3) processing priority groundwater management area evaluations under this chapter and Chapter 35;
- (4) providing technical and administrative assistance to newly created districts under this chapter and Chapter 35;
- (5) covering the costs of newspaper notices required under Sections 35.009 and 36.014 and failed elections in accordance with Sections 35.014(c), 36.017(h), and 36.019; and
- (6) providing for assistance from the Parks and Wildlife Department to the Texas Water Development Board or a district for the purpose of assessing fish and wildlife resource habitat needs as they may apply to overall management plan goals and objectives of the district.

Sec. 36.161. **ELIGIBILITY FOR FUNDING.** (a) The Texas Water Development Board may provide funds under Sections 36.159 and 36.160, Chapters 15, 16, and 17, and Subchapter L of this chapter to a district if the Texas Water Development Board determines that such funding will allow the district to comply or continue to comply with provisions of this chapter.

(b) The Texas Water Development Board may, after notice and hearing, discontinue funding described in Subsection (a) if the Texas Water Development Board finds that the district is not using the funds to comply with the provisions of this chapter.

(c) The Texas Water Development Board, when considering a discontinuance under Subsection (b), shall give written notice of the hearing to the district at least 20 days before the date set for the hearing. The hearing shall be conducted in accordance with Chapter 2001, Government Code, or the rules of the respective agency. General notice of the hearing shall be given in accordance with the rules of the agency.

(d) The Texas Water Development Board may delegate to the State Office of Administrative Hearings the responsibility to conduct a hearing under this section.

SECTION 4.35. Subchapter G, Chapter 36, Water Code, is amended by adding Sections 36.206 and 36.207 to read as follows:

Sec. 36.206. DISTRICT FEES. (a) A temporary board may set user fees to pay for the creation and initial operation of a district, until such time as the district creation has been confirmed and a permanent board has been elected by a majority vote of the qualified voters voting in the district in an election called for those purposes.

(b) The rate of fees set for crop or livestock production or other agricultural uses shall be no more than 20 percent of the rate applied to municipal uses.

Sec. 36.207. USE OF PERMIT FEES AUTHORIZED BY SPECIAL LAW. A district may use funds obtained from permit fees collected pursuant to the special law governing the district for any purpose consistent with the district's certified water management plan including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

SECTION 4.36. Subchapter I, Chapter 36, Water Code, is amended to read as follows:

SUBCHAPTER I. PERFORMANCE REVIEW AND DISSOLUTION [OF DISTRICT]

Sec. 36.301. FAILURE TO SUBMIT A MANAGEMENT PLAN. If a board fails to submit a management plan or to receive certification of its management plan under Section 36.1072 or fails to submit or receive certification of an amendment to the management plan under Section 36.1073, the commission shall take appropriate action under Section 36.303.

Sec. 36.302. LEGISLATIVE AUDIT REVIEW; DETERMINATION OF WHETHER DISTRICT IS OPERATIONAL. (a) A district is subject to review by the state auditor under the direction of the legislative audit committee pursuant to Chapter 321, Government Code.

(b) The commission, the Texas Water Development Board, and the Parks and Wildlife Department shall provide technical assistance to the state auditor's office for the review.

(c) The state auditor shall make a determination of whether a district is actively engaged in achieving the objectives of the district's management plan based on an audit of the district's performance under the plan.

(d) The state auditor shall conduct such audits following the first anniversary of the initial certification of the plan by the Texas Water Development Board under Section 36.1072 and following the end of every five-year period thereafter.

(e) The state auditor shall report findings of the review to the legislative audit committee and to the commission.

(f) If it is determined under Subsection (c) that the district is not operational, the commission shall take appropriate action under Section 36.303.

Sec. 36.303. ACTION BY COMMISSION. (a) If Section 36.301 or 36.302(f) applies, the commission, after notice and hearing in accordance with Chapter 2001, Government Code, shall take action the commission considers appropriate, including:

(1) issuing an order requiring the district to take certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with Sections 36.305 and 36.307;

(3) removing the district's taxing authority; or

(4) dissolving the district in accordance with Sections 36.304, 36.305, and 36.308.

(b) In addition to actions identified under Subsection (a), the commission may recommend to the legislature, based upon the report required by Section 35.018, actions the commission deems necessary to accomplish comprehensive management in the district.

Sec. 36.304 [36.301]. DISSOLUTION OF DISTRICT. (a) The [After notice and hearing, the] commission may dissolve a district that:

(1) is not operational, as determined under Section 36.302 [has been inactive for a period of three consecutive years]; and

(2) has no outstanding bonded indebtedness.

(b) A district composed of territory entirely within one county may be dissolved even if *the district* [it] has outstanding indebtedness that matures after the year in which the district is dissolved, whereupon the commissioners court shall levy and collect taxes on all taxable property in the district in an amount sufficient to pay the principal of and interest on the indebtedness when due. The taxes shall be levied and collected in the same manner as county taxes.

~~[(c) A district is considered active if:~~

~~[(1) the district has a board as required by Subchapter D;~~

~~[(2) the board holds regularly scheduled meetings and has on file minutes of its meetings;~~

~~[(3) the district has developed and filed with the commission a management plan for the district;~~

~~[(4) the district has copies of drillers' logs on file;~~

~~[(5) the district has on file well permits issued by the district; and~~

~~[(6) the district has on file annual district audits.]~~

Sec. 36.305 [36.302]. NOTICE OF HEARING FOR DISSOLUTION OF BOARD OR DISTRICT. (a) The commission shall give notice of the [dissolution] hearing for *dissolution of a district or of a board* which briefly describes the reasons for the proceeding.

(b) The notice shall be published once each week for two consecutive weeks before the day of hearing in a [some] newspaper having general circulation in the county or counties in which the district is located. The first publication shall be 30 days before the day of the hearing.

(c) The commission shall give notice of the hearing by first class mail addressed to the directors of the district according to the last record on file with the executive director.

Sec. 36.306 [36.303]. INVESTIGATION. The executive director shall investigate the facts and circumstances of *any violations of any rule or order of the commission or any provisions of this chapter and shall prepare and file a written report with the commission and district and include any actions the executive director believes the commission should take under Section 36.303.*

Sec. 36.307. ORDER OF DISSOLUTION OF BOARD. *If the commission enters an order to dissolve the board, the commission shall notify the county commissioners court of each county which contains territory in the district and the commission shall provide that temporary directors be appointed under Section 36.016 to serve until an election for a new board can be held under Section 36.017, provided, however, that district confirmation shall not be required for continued existence of the district and shall not be an issue in the election [the district to be dissolved and the result of the investigation shall be included in a written report].*

~~[Sec. 36.304. ORDER OF DISSOLUTION. The commission may enter an order dissolving the district at the conclusion of the hearing if it finds that the district has performed none of the functions for which it was created for a period of three consecutive years before the day of the proceeding and that the district has no outstanding bonded indebtedness.]~~

Sec. 36.308 [36.305]. CERTIFIED COPY OF ORDER. The commission shall file a certified copy of the order of dissolution of the district in the deed records of the county or counties in which the district is located. If the district was created by a special Act of the legislature, the commission shall file a certified copy of the order of dissolution with the secretary of state.

Sec. 36.309 [36.306]. APPEALS. ~~[(a)]~~ Appeals from *any* [a] commission order ~~[dissolving a district]~~ shall be filed and heard in the district court of any of the counties in which the land is located.

~~[(b) The trial on appeal shall be de novo and the substantial evidence rule shall not apply.]~~

Sec. 36.310 [36.307]. ASSETS ESCHEAT [TO STATE]. Upon the dissolution of a district by the commission, all assets of the district shall be sold at public auction and the proceeds given to the county if it is a single-county district. If it is a multicounty district, the proceeds shall be divided with the counties in proportion to the surface land area in each county served by the district ~~[escheat to the State of Texas. The assets shall be administered~~

~~by the state treasurer and shall be disposed of in the manner provided by Chapter 72, Property Code).~~

SECTION 4.37. Subsection (b), Section 36.325, Water Code, is amended to read as follows:

(b) The petition must be signed by:

- (1) a majority of the landowners in the territory;
- (2) at least 50 landowners if the number of landowners is more than 50; or
- (3) the commissioners court of the county in which the area is located if the area is identified as a *priority groundwater management* [critical] area or includes the entire county. The petition must describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district.

SECTION 4.38. Section 36.331, Water Code, is amended to read as follows:

Sec. 36.331. ANNEXATION OF NONCONTIGUOUS TERRITORY. Land not contiguous to the existing boundaries of a district may not be added to or annexed to a district unless the land is located either within the same management area, *priority groundwater management* [critical] area, or a groundwater subdivision designated by the commission or its predecessors.

SECTION 4.39. Chapter 36, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. GROUNDWATER DISTRICT LOAN ASSISTANCE FUND

Sec. 36.371. GROUNDWATER DISTRICT LOAN ASSISTANCE FUND. (a) *The groundwater district loan assistance fund is created, to be funded by direct appropriation and by the Texas Water Development Board from the water assistance fund.*

(b) *Repayments of loans shall be deposited in the water assistance fund.*

Sec. 36.372. FINANCIAL ASSISTANCE. (a) *The loan fund may be used by the Texas Water Development Board to provide loans to newly confirmed districts and legislatively created districts that do not require a confirmation election to pay for their creation and initial operations.*

(b) *The Texas Water Development Board shall establish rules for the use and administration of the loan fund.*

Sec. 36.373. APPLICATION FOR ASSISTANCE. (a) *In an application to the Texas Water Development Board for financial assistance from the loan fund, the applicant shall include:*

- (1) *the name of the district and its board members;*
- (2) *a citation of the law under which the district operates and was created;*
- (3) *a description of the initial operations;*
- (4) *the total start-up cost of the initial operations;*
- (5) *the amount of state financial assistance requested;*
- (6) *the plan for repaying the total cost of the loan; and*
- (7) *any other information the Texas Water Development Board may require to perform its duties and protect the public interest.*

(b) *The Texas Water Development Board may not accept an application for a loan from the loan fund unless it is submitted in affidavit form by the applicant's board. The Texas Water Development Board shall prescribe the affidavit form in its rules.*

(c) *The rules implementing this section shall not restrict or prohibit the Texas Water Development Board from requiring additional factual material from an applicant.*

Sec. 36.374. APPROVAL OF APPLICATION. *The Texas Water Development Board, by resolution, may approve an application if it finds that:*

- (1) *granting financial assistance to the applicant will serve the public interest; and*

(2) the revenue pledged by the applicant from district taxes and fees and other sources will be sufficient to meet all the obligations assumed by the applicant.

SECTION 4.40. Subsection (g), Section 151.318, Tax Code, is amended to read as follows:

(g) Each person engaged in manufacturing, processing, fabricating, or repairing tangible personal property for ultimate sale is entitled to a refund or a reduction in the amount of tax imposed by this chapter as provided by Subsection (h) for the purchase of machinery, equipment, and replacement parts or accessories with a useful life in excess of six months if the equipment is:

(1) used or consumed in or during the actual manufacturing, processing, fabrication, or repair of tangible personal property for ultimate sale, and the use or consumption of the property is necessary or essential to the manufacturing, processing, fabrication, or repair operation, or to a pollution control process; or

(2) specifically installed to:

(A) reduce water use and wastewater flow volumes from the manufacturing, processing, fabrication, or repair operation;

(B) reuse and recycle wastewater streams generated within the manufacturing, processing, fabrication, or repair operation; or

(C) treat wastewater from another industrial or municipal source for the purpose of replacing existing freshwater sources in the manufacturing, processing, fabrication, or repair operation.

SECTION 4.41. Subchapter D, Chapter 5, Water Code, is amended by adding Section 5.1035 to read as follows:

Sec. 5.1035. RULES REGARDING DRINKING-WATER STANDARDS. Before adopting rules regarding statewide drinking-water standards, the commission shall hold public meetings, if requested, at its regional offices to allow municipalities, water supply corporations, and other interested persons to submit data or comments concerning the proposed drinking-water standards.

SECTION 4.42. Section 5.235, Water Code, is amended by adding Subsection (o) to read as follows:

(o) A fee imposed under Subsection (j) of this section for the use of saline tidal water for industrial processes shall be \$1 per acre-foot of water diverted for the industrial process, not to exceed a total fee of \$5,000.

SECTION 4.43. Subsection (a), Section 26.121, Water Code (effective until delegation of NPDES permit authority), is amended to read as follows:

(a) Except as authorized by a rule, permit, or order issued by the commission, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the discharge complies with the person's:

(A) certified water quality management plan approved by the State Soil and Water Conservation Board as provided by Section 201.026, Agriculture Code; or

(B) water pollution and abatement plan approved by the commission; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

SECTION 4.44. Subsection (a), Section 26.121, Water Code (effective upon delegation of NPDES permit authority), is amended to read as follows:

(a) Except as authorized by the commission, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the discharge complies with a person's:

(A) certified water quality management plan approved by the State Soil and Water Conservation Board as provided by Section 201.026, Agriculture Code; or

(B) water pollution and abatement plan approved by the commission; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

SECTION 4.45. Subchapter D, Chapter 51, Water Code, is amended by adding Section 51.196 to read as follows:

Sec. 51.196. DEVELOPMENT OF UNDERGROUND WATER BY CERTAIN DISTRICTS. A conservation and reclamation district created by special law under the authority of Section 59, Article XVI, Texas Constitution, and designated as a municipal water district to which the administrative and taxing provisions applicable to districts governed by this chapter apply, may develop or otherwise acquire underground sources of water, notwithstanding a provision in that district's special law otherwise prohibiting the development of acquisition of underground water.

SECTION 4.46. Subchapter L, Chapter 51, Water Code, is amended by adding Section 51.534 to read as follows:

Sec. 51.534. ADDITION OF LAND SUBJECT TO WATER QUALITY PLAN TO DEFINED AREA. The procedures of Section 49.301 may be used to add land to a defined area created under this subchapter. The land must be included in the district and subject to a water quality plan approved by the commission but is not required to be contiguous to the defined area. Notwithstanding any law to the contrary, the procedures of Section 49.301 shall apply to districts operating under Chapter 49.

SECTION 4.47. Subsections (a) and (c), Section 401.002, Local Government Code, are amended to read as follows:

(a) A home-rule municipality may prohibit the pollution or degradation of and may police a stream, drain, recharge feature, recharge area, or tributary that may constitute or recharge the source of water supply of any municipality.

(c) The authority granted by this section may be exercised inside ~~or outside~~ the municipality's boundaries or inside the municipality's extraterritorial jurisdiction or outside the municipality's extraterritorial jurisdiction only if required to meet other state or federal requirements. The authority granted by this section for the protection of recharge, recharge areas, or recharge features of groundwater aquifers may be exercised outside the municipality's boundaries and within the extraterritorial jurisdiction provided the municipality exercising such authority has a population greater than 750,000 and the groundwater constitutes more than 75 percent of the municipality's source of water supply.

SECTION 4.48. (a) Sections 35.010, 35.011, and 35.016, Water Code, are repealed.

(b) Section 5.02, Chapter 133, Acts of the 60th Legislature, Regular Session, 1985, is repealed.

SECTION 4.49. (a) In this section, "district" means a groundwater conservation district created under Section 52, Article III, or Section 50, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(b) Notwithstanding the time limitation under Subsection (a), Section 36.1072, Water Code, as added by this Act, and notwithstanding any provision to the contrary in prior law, a district which was created or, if the district required a confirmation election, a district whose creation was confirmed before the effective date of this Act shall submit a management plan for

certification under Section 36.1072, Water Code, as added by this Act, to the Texas Water Development Board not later than September 1, 1998.

(c) Notwithstanding any provision to the contrary in prior law and in addition to existing powers and duties, a district that was created by special law, or whose creation was confirmed by an election required by the special law, before the effective date of this Act:

(1) in deciding whether or not to issue a permit and in setting the terms of the permit, shall consider matters set forth under Subsections (d) and (e), Section 36.113, Water Code, as amended by this Act, including, without limitation, whether the proposed use of water is consistent with the district's certified water management plan; and

(2) may use funds obtained from permit fees collected pursuant to the special law for any purpose consistent with the district's certified water management plan including, without limitation, making grants, loans, or contractual payments to achieve, facilitate, or expedite reductions in groundwater pumping or the development or distribution of alternative water supplies.

SECTION 4.50. An area designated as a critical area under Chapter 35, Water Code, as it existed before the effective date of this Act, or under other prior law, shall be known and referred to as a priority groundwater management area on or after the effective date of this Act.

SECTION 4.51. Not later than September 1, 1998, the Texas Natural Resource Conservation Commission must, under Chapter 35, Water Code, as amended by this Act, make all designations of priority groundwater management areas for which critical area reports were required to have been completed before the effective date of this Act under Section 35.007, Water Code, as that section existed immediately before the effective date of this Act.

ARTICLE 5. FINANCIAL ASSISTANCE FOR WATER NEEDS AND CONSERVATION

SECTION 5.01. Section 15.431, Water Code, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(d) Money appropriated by the legislature to be maintained as principal in the fund, \$10 million of the money transferred to that fund by H.B. No. 2, Acts of the 69th Legislature, Regular Session, 1985, and half of the money earned as interest on the money held as principal in the agricultural trust fund shall be maintained as principal. Money maintained as principal in the agricultural trust fund may ~~not~~ be used by the board to make conservation loans to borrower districts and loans to lender districts for the purposes listed in Section 17.895 of this code. Loans and conservation loans made under this subchapter are subject to the provisions of Sections 17.896 through 17.903 of this code. Repayments of principal and interest on loans and conservation loans made under this subchapter shall be deposited in the agricultural trust fund ~~[spent for any purpose]~~.

(g) In this section, "borrower district," "conservation loan," "individual borrower," "lender district," and "loan" have the meanings assigned those terms by Section 17.871 of this code.

SECTION 5.02. Section 16.189, Water Code, is amended to read as follows:

Sec. 16.189. LEASE PAYMENTS. In leasing a state facility for a term of years, the board shall require ~~[annual]~~ payments that will recover over the lease period not less than the total of:

(1) all ~~[the annual]~~ principal and interest requirements applicable to the debt incurred by the state in acquiring the facility; and

(2) the state's ~~[annual]~~ cost for operation, maintenance, and rehabilitation of the facility.

SECTION 5.03. Chapter 17, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. WATER FINANCIAL ASSISTANCE BOND PROGRAM

Sec. 17.951. DEFINITIONS. In this subchapter:

(1) "Fund" means the Texas Water Development Fund II.

(2) "Resolution" means any resolution or order approved by the board authorizing the issuance of water financial assistance bonds.

Sec. 17.952. ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS. The board by resolution may provide for the issuance of water financial assistance bonds, which shall be general obligation bonds of the state, in an aggregate principal amount not to exceed the principal amount authorized to be issued by Section 49-d-8, Article III, Texas Constitution.

Sec. 17.953. CONDITIONS FOR ISSUANCE OF WATER FINANCIAL ASSISTANCE BONDS. (a) Water financial assistance bonds may be issued as various series and issues.

(b) Water financial assistance bonds may mature, serially or otherwise, not later than 50 years after the date on which they are issued.

(c) Water financial assistance bonds may be issued as bonds, notes, or other obligations as permitted by law and may be in the form and denominations and be issued in the manner and under the terms, conditions, and details as provided by resolution.

(d) Water financial assistance bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

(e) Water financial assistance bonds shall be signed and executed as provided by resolution.

(f) Water financial assistance bonds may bear no interest or bear interest at a rate or rates determined in accordance with law.

(g) Rates of interest on water financial assistance bonds may be fixed, variable, floating, adjustable, or otherwise, as determined by the board or determined pursuant to any contractual arrangements approved by the board. The resolution may provide for the payment of interest at any time or the periodic determination of interest rates or interest rate periods.

Sec. 17.954. BOND ENHANCEMENT AGREEMENTS; PAYMENT OF EXPENSES. (a) The board at any time and from time to time may enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the water financial assistance bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves.

(b) The fees and expenses of the board in connection with the issuance of water financial assistance bonds and the providing of financial assistance to political subdivisions may be paid from money in the fund, provided that any payments due from the board under a bond enhancement agreement, other than fees and expenses, that relate to the payment of debt service on water financial assistance bonds constitute payments of principal of and interest on the water financial assistance bonds.

(c) Bond enhancement agreements may include, on terms and conditions approved by the board, interest rate swap agreements; currency swap agreements; forward payment conversion agreements; agreements providing for payments based on levels of or changes in interest rates or currency exchange rates; agreements to exchange cash flows or a series of payments; agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure; or other agreements that further enhance the marketability, security, or creditworthiness of water financial assistance bonds.

Sec. 17.955. PERSONS DESIGNATED TO ACT AS AGENTS OF BOARD. (a) In the resolution the board may delegate authority to one or more officers, employees, or agents designated by the board to act on behalf of the board during the time any series of water financial assistance bonds are outstanding to:

(1) fix dates, prices, interest rates, amortization schedules, redemption features, and interest payment periods;

(2) perform duties and obligations of the board under a bond enhancement agreement; and

(3) perform other procedures specified in the resolution.

(b) *The person designated by the board may adjust the interest on water financial assistance bonds and perform all duties described in a bond enhancement agreement as necessary to permit the water financial assistance bonds to be sold or resold at par in conjunction with secondary market transactions.*

Sec. 17.956. TEXAS WATER DEVELOPMENT FUND II. *The fund is a special fund in the state treasury, and all water financial assistance bond proceeds shall be deposited in the state treasury to the credit of the fund. The fund shall contain a "state participation account," an "economically distressed areas program account," and a "financial assistance account," and proceeds from the sale of water financial assistance bonds issued for the purpose of providing financial assistance to political subdivisions shall be credited to such accounts as provided by resolution by the board. By resolution, the board may create additional accounts within the fund as the board determines are necessary or convenient for the administration of the fund.*

Sec. 17.957. STATE PARTICIPATION ACCOUNT. (a) *The Texas Water Development Fund II state participation account, referred to as the "state participation account," is an account established within the fund in the state treasury. Transfers shall be made from this account as provided by this subchapter.*

(b) *The state participation account is composed of:*

(1) *money and assets attributable to water financial assistance bonds designated by the board as issued for projects described in Section 16.131;*

(2) *money from the sale, transfer, or lease of a project described in Subdivision (1) that was acquired, constructed, reconstructed, developed, or enlarged with money from the state participation account;*

(3) *payments received under a bond enhancement agreement with respect to water financial assistance bonds designated by the board as issued for projects described in Section 16.131;*

(4) *investment income earned on money on deposit in the state participation account; and*

(5) *any other funds, regardless of their source, that the board directs be deposited to the credit of the state participation account.*

(c) *Money on deposit in the state participation account may be used by the board for projects described in Section 16.131 in the manner that the board determines necessary for the administration of the fund.*

Sec. 17.958. ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT. (a) *The Texas Water Development Fund II economically distressed areas program account, referred to as the "economically distressed areas program account," is an account established within the fund in the state treasury. Transfers shall be made from this account as provided by this subchapter.*

(b) *The economically distressed areas program account is composed of:*

(1) *money and assets attributable to water financial assistance bonds designated by the board as issued for projects described in Subchapter K;*

(2) *money provided by the federal government, the state, political subdivisions, and private entities for the purpose of paying debt service on water financial assistance bonds issued for purposes provided by Subchapter K;*

(3) *payments received under a bond enhancement agreement with respect to water financial assistance bonds designated by the board as issued for purposes provided by Subchapter K;*

(4) *investment income earned on money on deposit in the economically distressed areas program account; and*

(5) *any other funds, regardless of their source, that the board directs be deposited to the credit of the economically distressed areas program account.*

(c) *Money on deposit in the economically distressed areas program account may be used by the board for purposes provided by Subchapter K in the manner that the board determines necessary for the administration of the fund.*

Sec. 17.959. FINANCIAL ASSISTANCE ACCOUNT. (a) *The Texas Water Development Fund II water financial assistance account, referred to as the "financial assistance account," is an account established within the fund in the state treasury. Transfers shall be made from this account as provided by this subchapter.*

(b) *The financial assistance account is composed of:*

(1) *money and assets attributable to water financial assistance bonds designated by the board as issued for purposes described in Section 49-d-8, Article III, Texas Constitution, other than for purposes described in Sections 17.957 and 17.958;*

(2) *payments received under a bond enhancement agreement with respect to water financial assistance bonds designated by the board as issued for purposes described in Section 49-d-8, Article III, Texas Constitution, other than for purposes described in Sections 17.957 and 17.958;*

(3) *investment income earned on money on deposit in the financial assistance account; and*

(4) *any other funds, regardless of their source, that the board directs be deposited to the credit of the financial assistance account.*

(c) *Money on deposit in the financial assistance account may be used by the board for any one or more of the purposes described in Section 49-d-8, Article III, Texas Constitution, other than for purposes described in Sections 17.957 and 17.958, in the manner that the board determines necessary for the administration of the fund.*

Sec. 17.960. BOND RESOLUTIONS. (a) *In the resolution, the board may make additional covenants with respect to water financial assistance bonds and may provide for:*

(1) *the flow of funds;*

(2) *the establishment of accounts and subaccounts within the fund that the board determines are necessary for the administration of the fund;*

(3) *at the discretion of the board, the payment of fees and expenses of the board in connection with providing financial assistance to political subdivisions as the board determines are necessary for the administration of the fund;*

(4) *the maintenance, investment, and management of money within the fund and any accounts established by resolution by the board; and*

(5) *any other provisions and covenants that the board determines are necessary for the administration of the fund.*

(b) *The board may invest and reinvest money in the fund and any account therein in any obligations or securities as provided by the resolution or by rule adopted by the board.*

(c) *The board may adopt and have executed other proceedings, agreements, or trust agreements or instruments necessary in the issuance of water financial assistance bonds, including, without limitation, bond enhancement agreements.*

Sec. 17.961. TRANSFERS TO REVOLVING FUNDS. (a) *In order to implement and administer a revolving loan program established under Title VI of the Federal Water Pollution Control Act (33 U.S.C. Section 1381 et seq.), the board may direct the comptroller to transfer amounts from the financial assistance account to the state water pollution control revolving fund created by Section 15.601 to provide financial assistance pursuant to this subchapter.*

(b) *In order to implement and administer a revolving loan program established by any other federal legislation, including, without limitation, Title XIV of the federal Public Health Service Act, or any federal agency program under which an additional state revolving fund, as defined in Section 15.602, has been established, the board may direct the comptroller to transfer amounts from the financial assistance account to such additional state revolving fund to provide financial assistance pursuant to this subchapter.*

(c) *The board shall use the state water pollution control revolving fund in accordance with Section 15.604(a)(4) and Section 603(d)(4), Federal Water Pollution Control Act (33 U.S.C. Section 1383), as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are deposited into the state water pollution control revolving*

fund, and to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

(d) In the event amounts are transferred to any additional state revolving fund, as defined in Section 15.602, pursuant to Subsection (b), the board shall, to the extent permitted by the federal legislation or federal agency program under which such additional state revolving fund was established, use the additional state revolving fund as a source of revenue to be deposited in accordance with this subchapter for the payment of principal and interest on water financial assistance bonds issued by the board, the proceeds of which are deposited into the additional state revolving fund, and to make payments under a bond enhancement agreement with respect to principal or interest on the water financial assistance bonds.

Sec. 17.962. STATE APPROVALS. (a) Water financial assistance bonds may not be issued under this subchapter unless such issuance has been reviewed and approved by the bond review board.

(b) The proceedings relating to the water financial assistance bonds issued under this subchapter are subject to review and approval by the attorney general in the same manner and with the same effect as provided by Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).

(c) After approval by the attorney general of the proceedings relating to water financial assistance bonds issued under this subchapter, registration of the proceedings by the comptroller, and delivery of the water financial assistance bonds to the purchasers, the water financial assistance bonds are incontestable and constitute general obligations of the state.

Sec. 17.963. PAYMENT OF BOARD OBLIGATIONS. (a) The board shall cooperate with the comptroller to develop procedures for the payment of principal and interest on water financial assistance bonds and any obligation under a bond enhancement agreement, as the same become due and owing.

(b) If there is not enough money in any account of the fund available to pay the principal and interest on water financial assistance bonds issued for such account, including money to make payments by the board under a bond enhancement agreement with respect to principal or interest on such water financial assistance bonds, the board shall notify the comptroller of such occurrence, and the comptroller shall transfer out of the first money coming into the state treasury not otherwise appropriated by the constitution the amount required to pay the obligations of the board that are due and owing. The comptroller shall make the transfers required by Section 49-d-8, Article III, Texas Constitution, and this subchapter in the manner specified in the resolution.

Sec. 17.964. ELIGIBLE SECURITY. Water financial assistance bonds are eligible to secure deposits of public funds of the state and political subdivisions of the state. Water financial assistance bonds are lawful and sufficient security for deposits to the extent of their face value.

Sec. 17.965. LEGAL INVESTMENTS. Water financial assistance bonds are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds and other public funds of the state and its agencies and of political subdivisions of the state.

Sec. 17.966. MUTILATED, LOST, OR DESTROYED BONDS. The board may provide for the replacement of mutilated, lost, or destroyed water financial assistance bonds.

Sec. 17.967. REFUNDING BONDS. (a) *The board by resolution may provide for the issuance of water financial assistance bonds to refund outstanding bonds and water financial assistance bonds issued under this chapter and federal contractual obligations incurred under Section 49-d, Article III, Texas Constitution.*

(b) *The board may sell the refunding water financial assistance bonds and use the proceeds to retire any of the outstanding obligations described in Subsection (a), exchange the refunding water financial assistance bonds for the outstanding bonds or water financial assistance bonds, or refund any of the outstanding obligations described in Subsection (a) in the manner provided by any other applicable statute, including Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes).*

Sec. 17.968. SALE OF POLITICAL SUBDIVISION BONDS BY THE BOARD; USE OF PROCEEDS. (a) *The board may sell or dispose of political subdivision bonds purchased with money in the fund to any person, including the Texas Water Resources Finance Authority, and the board, in such manner as it shall determine, may apply the proceeds of the sale of political subdivision bonds held by the board to:*

(1) *pay debt service on water financial assistance bonds issued under this subchapter; or*

(2) *provide financial assistance to political subdivisions for any one or more of the purposes authorized by Section 49-d-8, Article III, Texas Constitution.*

(b) *The board shall sell the political subdivision bonds at the price and under the terms that it determines to be reasonable.*

Sec. 17.969. TAX EXEMPT BONDS. *Since the board is performing an essential governmental function in the exercise of the powers conferred on it by this chapter, water financial assistance bonds issued under this subchapter and the interest and income from the water financial assistance bonds, including any profit made on the sale of water financial assistance bonds, and all fees, charges, gifts, grants, revenues, receipts, and other money received or pledged to pay or secure the payment of water financial assistance bonds are free from taxation and assessments of every kind by this state and any city, county, district, authority, or other political subdivision of this state.*

Sec. 17.970. ENFORCEMENT BY MANDAMUS. *Payment of water financial assistance bonds and obligations incurred under bond enhancement agreements and performance of official duties prescribed by Section 49-d-8, Article III, Texas Constitution, and this subchapter may be enforced in a court of competent jurisdiction by mandamus or other appropriate proceedings.*

Sec. 17.971. SUBCHAPTER CUMULATIVE OF OTHER LAWS. (a) *This subchapter is cumulative of other laws on the subject, and the board may use provisions of other applicable laws in the issuance of water financial assistance bonds and the execution of bond enhancement agreements, but this subchapter is wholly sufficient authority for the issuance of water financial assistance bonds, the execution of bond enhancement agreements, and the performance of all other acts and procedures authorized by this subchapter.*

(b) *In addition to other authority granted by this subchapter, the board may exercise the authority granted to the governing body of an issuer with regard to the issuance of obligations under Chapter 656, Acts of the 68th Legislature, Regular Session, 1983 (Article 717q, Vernon's Texas Civil Statutes).*

(c) *In exercising the powers granted to the board under this subchapter, the board may exercise any powers granted to it under this chapter and Chapter 16 including the powers described in Subchapters D, E, F, G, and K, notwithstanding any provision in this chapter or Chapter 16 that may be inconsistent with or in conflict with the provisions of this subchapter as a result of the establishment of the fund as a fund separate and distinct from the existing Texas Water Development Fund, it being the intent of the legislature that the financial assistance made available to political subdivisions under this subchapter, in pursuance of the authority granted by Section 49-d-8, Article III, Texas Constitution, be provided by the board in the manner the board deems necessary to achieve the purposes of Section 49-d-8, Article III, Texas Constitution, and notwithstanding any other existing provisions in this chapter or Chapter 16, the provisions of this chapter and Chapter 16 shall*

be inclusive of the provisions of this subchapter and Section 49-d-8, Article III, Texas Constitution.

SECTION 5.04. Subdivision (7), Section 17.001, Water Code, is amended to read as follows:

(7) "Water supply project" means:

(A) any engineering undertaking or work to conserve and develop ~~[surface or subsurface]~~ water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, *brush control, precipitation enhancement, desalinization,* and other water storage and conservation projects, which may include flood storage, including underground storage projects, filtration and water treatment plants, including any system necessary to transport water from storage to points of distribution or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers or to retail purchasers as authorized by Section 17.072(c) of this code, by the acquisition, by purchase of rights in ~~[underground]~~ water, by the drilling of wells, or for any one or more of these purposes or methods; ~~[or]~~

(B) any engineering undertaking or work outside the state to provide for the maintenance and enhancement of the quality of water by eliminating saline inflow through well pumping and deep well injection of brine *if such undertaking or work results in water being available for use in or for the benefit of Texas;*

(C) *any undertaking or work by Texas political subdivisions to conserve, convey, or develop water resources in areas outside Texas if such undertaking or work results in water being available for use in or for the benefit of Texas; or*

(D) *a channel storage reservoir located on an international boundary between Texas and Mexico that develops the water resources of Texas and the research, planning, and actions necessary to obtain regulatory authority at the local, state, and federal level.*

SECTION 5.05. Section 17.001, Water Code, is amended by amending Subdivision (17) and adding Subdivision (25) to read as follows:

(17) "Financial assistance" means any loan of funds from the water supply account, the water quality enhancement account, or the flood control account to a political subdivision for construction of a water supply project, *including projects referenced in the state water plan,* treatment works, or flood control measures through the purchase of bonds or other obligations of the political subdivision, *and any loan of funds the source of which is the proceeds from water financial assistance bonds.*

(25) "Water financial assistance bonds" means the Texas Water Development Bonds authorized to be issued by Section 49-d-8, Article III, Texas Constitution, and dedicated to use for the purposes described in that section.

SECTION 5.06. Section 17.011, Water Code, is amended by adding Subsection (c) to read as follows:

(c) *Notwithstanding any other provision of this section, the board by resolution may issue water financial assistance bonds for any one or more of the purposes described in Section 49-d-8, Article III, Texas Constitution, in an aggregate principal amount not to exceed the amount of bonds authorized by Section 49-d-8, Article III, Texas Constitution, in accordance with the provisions of Subchapter L.*

SECTION 5.07. Section 17.0111, Water Code, is amended to read as follows:

Sec. 17.0111. DEDICATION OF CERTAIN BONDS. *No more than \$250 million in principal* ~~[Fifty percent of the]~~ amount of bonds authorized by Article III, Section 49-d-7, of the Texas Constitution, *and issued under either that section or Article III, Section 49-d-8, of the Texas Constitution, may be* ~~[is]~~ dedicated to the purposes provided by Subchapter K ~~[of this chapter].~~

SECTION 5.08. Section 17.182, Water Code, is amended to read as follows:

Sec. 17.182. PROCEEDS FROM SALE. Unless used to pay debt service on bonds issued under this chapter, the proceeds from the sale of political subdivision bonds held by the

board either shall be credited to the account from which financial assistance was made to the political subdivision, except that accrued interest shall be credited to the interest and sinking fund, or shall be deposited to the credit of the Texas Water Development Fund II, established within the state treasury pursuant to Section 49-d-8, Article III, Texas Constitution. However, no such proceeds shall be deposited to the credit of the Texas Water Development Fund II unless the executive administrator certifies to the board that the transfer of such proceeds into the Texas Water Development Fund II will not cause the board, in the fiscal year the transfer is made, to direct the comptroller to transfer out of the first money coming into the state treasury during that fiscal year funds sufficient for the payment of principal of or interest on water development bonds, other than water development bonds issued for the purposes described in Subsection (e), Section 49-d-7, Article III, Texas Constitution, coming due in that fiscal year.

SECTION 5.09. Section 17.278, Water Code, is amended to read as follows:

Sec. 17.278. FINDINGS REGARDING PERMITS. If an application includes a proposal for a wastewater treatment plant, the board may not deliver funds for the wastewater treatment plant until the applicant has obtained a permit for the construction and operation of the plant and approval of the plans and specifications for the plant from the commission. *If an application includes a proposal for a wastewater treatment plant that is located outside the jurisdiction of this state and that is not subject to the permitting authority of the commission, the board may not deliver funds for the wastewater treatment plant until after the board reviews the plans and specifications in coordination with the commission and finds that the wastewater treatment plant is capable of producing effluent that will meet federal and Texas-approved water quality standards and if effluent produced will result in water being available for use in or for the benefit of Texas.*

SECTION 5.10. Sections 44.007 through 44.010, Agriculture Code, are amended to read as follows:

Sec. 44.007. LINKED DEPOSIT PROGRAM. (a) The board shall establish a linked deposit program to encourage commercial lending for the enhanced production, processing, and marketing of certain agricultural crops and for the *financing* ~~purchase~~ of water conservation *projects or* equipment for agricultural production purposes.

(b) The board shall promulgate rules for the loan portion of the linked deposit program. The rules must include:

- (1) a list of the categories of crops customarily grown in Texas;
- (2) a list of crops that are alternative agricultural crops;
- (3) a list of crops the production of which has declined markedly because of natural disasters; and
- (4) identification of *projects and* ~~the~~ types of equipment considered as water conservation *projects or* equipment for agricultural production purposes.

(c) In order to participate in the linked deposit program, an eligible lending institution may solicit loan applications from eligible borrowers.

(d) After reviewing an application and determining that the applicant is eligible and creditworthy, the eligible lending institution shall send the application for a linked deposit loan to the board *or the administrator of the Texas Agricultural Finance Authority.*

(e) The eligible lending institution shall certify the interest rate applicable to the specific eligible borrower and attach it to the application sent to the board *or the administrator of the Texas Agricultural Finance Authority.*

(f) After reviewing each linked deposit loan application, the board shall recommend to the comptroller ~~state treasurer~~ the acceptance or rejection of the application.

(g) After acceptance of the application, the *comptroller* ~~state treasurer~~ shall place a linked deposit with the applicable eligible lending institution for the period the *comptroller* ~~treasurer~~ considers appropriate. The *comptroller* ~~state treasurer~~ may not place a deposit for a period extending beyond the state fiscal biennium in which it is placed. Subject to the limitation described by Section 44.010 of this chapter, the *comptroller* ~~treasurer~~ may place time deposits at an interest rate described by Section 44.001(5)(A) of this chapter, notwithstanding any order of the State Depository Board to the contrary.

(h) Before the placing of a linked deposit, the eligible lending institution and the state, represented by the *comptroller* [~~state treasurer~~] and the board, shall enter into a written deposit agreement containing the conditions on which the linked deposit is made.

(i) If a lending institution holding linked deposits ceases to be a state depository, the *comptroller* [~~state treasurer~~] may withdraw the linked deposits.

(j) The board may adopt rules that create a procedure for determining priorities for loans granted under this chapter. Each rule adopted must state the policy objective of the rule. The policy objectives of the rules may include preferences to:

- (1) achieve adequate geographic distribution of loans;
- (2) assist certain industries;
- (3) encourage certain practices including water conservation; and
- (4) encourage value-added processing of agricultural products.

Sec. 44.008. COMPLIANCE. (a) On accepting a linked deposit, an eligible lending institution must loan money to eligible borrowers in accordance with the deposit agreement and this chapter. The eligible lending institution shall forward a compliance report to the board.

(b) The board shall monitor compliance with this chapter and inform the *comptroller* [~~state treasurer~~] of noncompliance on the part of an eligible lending institution.

Sec. 44.009. STATE LIABILITY PROHIBITED. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an eligible borrower. A delay in payment or default on a loan by an eligible borrower does not affect the validity of the deposit agreement. Linked deposits are not an extension of the state's credit within the meaning of any state constitutional prohibition.

Sec. 44.010. LIMITATIONS IN PROGRAM. (a) At any one time, not more than \$15 [~~\$5~~] million, of which \$10 million may only be used to finance water conservation projects, may be placed in linked deposits under this chapter.

(b) The maximum amount of a loan under this chapter to process and market Texas agricultural crops is \$500,000. The maximum amount of a loan under this chapter to produce alternative agricultural crops in this state is \$250,000. The maximum amount of a loan under this chapter to finance [~~purchase~~] water conservation projects or equipment for agricultural production purposes is \$250,000.

(c) A loan granted pursuant to this chapter must be applied to the purchase or lease of land, equipment, seed, fertilizer, direct marketing facilities, or processing facilities, or to payment for professional services.

(d) A loan granted pursuant to this chapter, when used to finance eligible water conservation projects or equipment, may be applied to existing debt resulting from the financing of water conservation projects or equipment for agricultural purposes as defined by board rule.

SECTION 5.11. Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.32 to read as follows:

Sec. 11.32. CERTAIN WATER CONSERVATION INITIATIVES. The governing body of a taxing unit by official action of the governing body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of property on which approved water conservation initiatives have been implemented. For purposes of this section, approved water conservation initiatives shall be designated pursuant to an ordinance or other law adopted by the governing unit.

SECTION 5.12. Section 2155.444, Government Code, is amended by adding Subsection (d) to read as follows:

(d) The commission and all state agencies making purchase of vegetation for landscaping purposes, including plants, shall give preference to Texas vegetation native to the region if the cost to the state is not greater and the quality is not inferior.

SECTION 5.13. Subchapter E, Chapter 13, Water Code, is amended by adding Section 13.143 to read as follows:

Sec. 13.143. NOTICE OF WHOLESALE WATER SUPPLY CONTRACT. A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, and any other condition or agreement relating to the contract.

ARTICLE 6. SMALL COMMUNITIES ASSISTANCE

SECTION 6.01. Section 5.311, Water Code, is amended to read as follows:

Sec. 5.311. DELEGATION OF RESPONSIBILITY. (a) The commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility to hear any matter before the commission *and to issue interlocutory orders related to interim rates under Chapter 13.*

(b) *Except as provided in Subsection (a), the [The] administrative law judge shall report to the commission on the hearing in the manner provided by law.*

SECTION 6.02. Subdivisions (11), (21), and (24), Section 13.002, Water Code, are amended to read as follows:

(11) "Member" means a person who holds a membership in a water supply or sewer service corporation and ~~[who either receives water or sewer utility service from the corporation or]~~ is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation *or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation.* In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(21) "Service" means any act ~~[done, rendered, or]~~ performed, anything furnished or supplied, and any ~~facilities or lines committed or [facility] used[, furnished, or supplied]~~ by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(24) "Water supply or sewer service corporation" means a nonprofit, ~~member-owned, member-controlled~~ corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes) that provides potable water service or sewer service for compensation *and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled.* The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold.

SECTION 6.03. Section 13.181, Water Code, is amended to read as follows:

Sec. 13.181. POWER TO ENSURE COMPLIANCE; RATE REGULATION. (a) *Except for the provisions of Section 13.192, this subchapter shall apply only to a utility and shall not be applied to municipalities, counties, districts, or water supply or sewer service corporations.*

(b) Subject to this chapter, the commission has all authority and power of the state to ensure compliance with the obligations of utilities under this chapter. For this purpose the regulatory authority may fix and regulate rates of utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. A rule or order of the regulatory authority may not conflict with the rulings of any federal regulatory body. ~~[Except Section 13.192, this subchapter shall apply only to a utility and shall not be applied to municipalities, counties, districts, or water supply or sewer service corporations.]~~ The commission may adopt rules which authorize a utility which is permitted

under Section 13.242(c) to provide service without a certificate of public convenience and necessity to request or implement a rate increase and operate according to rules, regulations, and standards of service other than those otherwise required under this chapter provided that rates are just and reasonable for customers and the utility and that service is safe, adequate, efficient, and reasonable.

SECTION 6.04. Section 13.183, Water Code, is amended by adding Subsection (c) to read as follows:

(c) To ensure that retail customers receive a higher quality or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority may develop methodologies for water or sewer rates based on factors other than rate of return and those specified in Section 13.185. Overall revenues determined pursuant to an alternate methodology developed under this section must provide revenues to the utility that satisfy the requirements of Subsection (a). In determining to use alternate ratemaking methodologies, the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.

SECTION 6.05. Subsection (a), Section 13.184, Water Code, is amended to read as follows:

(a) Unless the commission establishes alternate rate methodologies in accordance with Section 13.183(c), the commission ~~(The regulatory authority)~~ may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. The governing body of a municipality exercising its original jurisdiction over rates and services may use alternate ratemaking methodologies established by ordinance or by commission rule in accordance with Section 13.183(c). Unless the municipal regulatory authority uses alternate ratemaking methodologies established by ordinance or by commission rule in accordance with Section 13.183(c), it may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public.

SECTION 6.06. Subsection (a), Section 13.185, Water Code, is amended to read as follows:

(a) Unless alternate methodologies are adopted as provided in Sections 13.183(c) and 13.184(a), the ~~(The)~~ components of invested capital and net income shall be determined according to the rules stated in this section.

SECTION 6.07. Subchapter G, Chapter 13, Water Code, is amended by adding Section 13.241 to read as follows:

Sec. 13.241. GRANTING CERTIFICATES. *(a) In determining whether to grant a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.*

(b) For water utility service, the commission shall ensure that the applicant:

- (1) is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and requirements of this code; and*
- (2) has access to an adequate supply of water.*

(c) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants and the requirements of this code.

(d) Before the commission grants a new certificate of convenience and necessity for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.

SECTION 6.08. Section 13.246, Water Code, is amended to read as follows:

Sec. 13.246. NOTICE AND HEARING; ISSUANCE OR REFUSAL; FACTORS CONSIDERED. *(a) If an application for a certificate of public convenience and necessity is filed, the commission shall cause notice of the application to be given to affected parties and, if*

requested, shall fix a time and place for a hearing and give notice of the hearing. Any person affected by the application may intervene at the hearing.

(b) The commission may grant applications and issue certificates only if the commission finds that a certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue a certificate as requested, or refuse to issue it, or issue it for the construction of only a portion of the contemplated system or facility or extension, or for the partial exercise only of the right or privilege *and may impose special conditions necessary to ensure that continuous and adequate service is provided.*

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of service currently provided to the requested area, the need for additional service in the requested area, the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area, the ability of the applicant to provide adequate service, the feasibility of obtaining service from an adjacent retail public utility, the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio, environmental integrity, and the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.

(d) *The commission may require an applicant utility to provide a bond or other financial assurance in a form and amount specified by the commission to ensure that continuous and adequate utility service is provided.*

(e) *Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For the purposes of this subsection, "economically distressed area" has the meaning assigned by Section 15.001.*

SECTION 6.09. Section 13.253, Water Code, is amended to read as follows:

Sec. 13.253. IMPROVEMENTS IN SERVICE; INTERCONNECTING SERVICE. (a) After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity *or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Section 16.341* to:

(A) provide specified improvements in its service in a defined area if service in that area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the retail public utility to provide the improved service; *or*

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility *if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the commission;*

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for ~~the~~ interconnecting service; ~~or~~

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; *or*

(4) issue an emergency order, with or without a hearing, under Section 13.041 ~~[of this code]~~.

(b) *If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Section 341.0355, Health and Safety Code, or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be*

heard by the commissioners at a commission meeting, may immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance. The order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting. After notice and hearing, the commission may require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

SECTION 6.10. Section 13.254, Water Code, is amended to read as follows:

Sec. 13.254. **REVOCATION OR AMENDMENT OF CERTIFICATE.** (a) The commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it finds that:

(1) the certificate holder has never provided, is no longer providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

(2) in an affected county as defined in Section 16.341, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county as defined in Section 16.341, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) the certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) the certificate holder has failed to file a cease and desist action pursuant to Section 13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(b) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities with their consent to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility for the taking, damaging, or loss of personal property, including the retail public utility's business, is just and adequate shall at a minimum include: the impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the value of the service facilities of the retail public utility located within the area in question;

the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues and expenses of the retail public utility; necessary and reasonable legal expenses and professional fees; factors relevant to maintaining the current financial integrity of the retail public utility; and other relevant factors.

(h) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time. If there were no current customers in the area decertified and no immediate loss of revenues or if there are other valid reasons determined by the commission, installment payments as new customers are added in the decertified area may be an acceptable method of payment.

SECTION 6.11. Section 13.301, Water Code, is amended to read as follows:

Sec. 13.301. REPORT OF SALE, MERGER, ETC.; INVESTIGATION; DISALLOWANCE OF TRANSACTION. (a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

(1) file a written application with ~~[notify]~~ the commission; and

(2) ~~[give public notice]~~ unless public notice is waived by the executive director for good cause shown, *give public notice of the action [at least 120 days before the effective date of any sale, acquisition, lease, or rental of any water or sewer system required by law to possess a certificate of public convenience and necessity or of any merger or consolidation with such a utility or water supply or sewer service corporation].*

(b) *The commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.*

(c) *If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the commission may require that the person provide a bond or other financial assurance in a form and amount specified by the commission to ensure continuous and adequate utility service is provided.*

(d) The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) ~~[(e)]~~ Before the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the executive director's decision whether to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

(1) the *application filed with* ~~[notification to]~~ the commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system *has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person* ~~[is inexperienced as a utility service provider];~~

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the commission or the Texas Department of Health; or

(B) ~~[(e)]~~ continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(f) [(d)] Unless the executive director requests that a public hearing be held, the sale, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period; or

(2) ~~[may be completed]~~ at any time after the executive director notifies the utility or water supply or sewer service corporation that a hearing will not be requested.

(g) If a hearing is requested or if the utility or water supply or sewer service corporation fails to *make the application as* ~~[provide the]~~ required ~~[notification]~~ or to *provide* public notice, the sale, acquisition, lease, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(h) A sale, acquisition, lease, or rental of any water or sewer system required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of this section is void.

(i) [(e)] This section does not apply to:

(1) the purchase of replacement property; or

(2) ~~[to]~~ a transaction under Section 13.255 of this code.

(j) [(f)] If a public utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the public utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or its controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(k) [(g)] A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

SECTION 6.12. Section 13.302, Water Code, is amended to read as follows:

Sec. 13.302. PURCHASE OF VOTING STOCK IN ANOTHER PUBLIC UTILITY: REPORT. (a) A utility may not purchase voting stock in another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility *files a written application with* ~~[notifies]~~ the commission ~~[of the proposed purchase or acquisition]~~ not later than the 61st day before the date on which the transaction is to occur.

(b) *The commission may require that a person acquiring a controlling interest in a utility demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.*

(c) *If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require that the person provide a bond or other financial assurance in a form and amount specified by the commission to ensure continuous and adequate utility service is provided.*

(d) The executive director may request that the commission hold a public hearing on the transaction if the executive director believes that a *criterion* ~~[criteria]~~ prescribed by Section 13.301(e) ~~[13.301(e) of this code]~~ applies.

(e) [(e)] Unless the executive director requests that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) ~~[may be completed]~~ at any time after the executive director notifies the person or utility that a hearing will not be requested.

(f) If a hearing is requested or if the person or utility fails to *make the application to the commission as [provide the] required [notification to the commission]*, the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

SECTION 6.13. Section 13.412, Water Code, is amended by amending Subsections (a) and (b) and adding Subsections (f) and (g) to read as follows:

(a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) *informs the commission that the owner is abandoning the system;*
- (3) ~~[or]~~ violates a final order of the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if an appointment is necessary:

- (1) to guarantee the collection of assessments, fees, penalties, or interest;
- (2) to guarantee *continuous and adequate [continued]* service to the customers of the utility; or
- (3) to prevent continued or repeated violation of the final order.

(f) *For purposes of this section and Section 13.4132, abandonment may include but is not limited to:*

- (1) *failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;*
- (2) *failure to provide appropriate water or wastewater treatment so that a potential health hazard results;*
- (3) *failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;*
- (4) *failure to provide customers adequate notice of a health hazard or potential health hazard;*
- (5) *failure to secure an alternative available water supply during an outage;*
- (6) *displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and*
- (7) *failure to provide the commission with adequate information on how to contact the utility for normal business and emergency purposes.*

(g) *Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek commission approval to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.*

SECTION 6.14. Subsections (a) and (c), Section 13.4132, Water Code, are amended to read as follows:

(a) The commission, after providing to the utility notice and an opportunity *to be heard by the commissioners at a commission meeting [for a hearing]*, may authorize a willing person to temporarily manage and operate a utility *if the utility:*

- (1) ~~[that]~~ has discontinued or abandoned operations or the provision of services; or
- (2) *has been or is being referred to the attorney general for the appointment of a receiver under Section 13.412 [of this code].*

(c) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

- (1) read meters;
- (2) bill for utility services;
- (3) collect revenues;
- (4) disburse funds; ~~and~~
- (5) *access all system components; and*
- (6) request rate increases.

SECTION 6.15. Section 15.602, Water Code, is amended to read as follows:

Sec. 15.602. DEFINITIONS. In this subchapter:

(1) "Additional state revolving fund" means any state revolving fund hereafter established by the board to provide financial assistance to political subdivisions for public works in accordance with a capitalization grant program hereafter established by a federal agency or otherwise authorized by federal law.

(2) "Authorized investments" means any authorized investments described in Section 404.024, Government Code.

(3) "*Community water system*" means a public water system that:

(A) *serves at least 15 service connections used by year-round residents of the area served by the system; or*

(B) *regularly serves at least 25 year-round residents.*

(4) "Construction" shall have the meaning assigned by the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(5) "*Disadvantaged community*" means an area meeting criteria established by board rule, which criteria shall be based on measures that may include single-family residential property valuation, income levels of residents of the area, or other similarly appropriate measures.

(6) [(4)] "Federal Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(7) "*Nonprofit noncommunity water system*" means a public water system that is not operated for profit and that:

(A) *is owned by a political subdivision or nonprofit entity; and*

(B) *is not a community water system.*

(8) [(5)] "Political subdivision" means a municipality, intermunicipal, interstate, or state agency, ~~or~~ any other public entity eligible for assistance under this subchapter, or a nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), if such entity is eligible for financial assistance under federal law establishing the state revolving fund or an additional state revolving fund.

(9) "*Public water system*" means a system that is owned by any person and that meets the definition of public water system in the Safe Drinking Water Act.

(10) [(6)] "Public works" means any project to acquire, construct, improve, repair, or otherwise provide any buildings, structures, facilities, equipment, or other real or personal property or improvements designed for public use, protection, or enjoyment undertaken by a political subdivision and paid for, in whole or in part, out of public funds.

(11) [(7)] "Revolving fund" means the state water pollution control revolving fund.

(12) "*Safe Drinking Water Act*" means Title XIV of the federal Public Health Service Act, commonly known as the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f et seq.).

(13) "Safe drinking water revolving fund" means the fund established by the board as an additional state revolving fund to provide financial assistance in accordance with the federal program established pursuant to the provisions of the Safe Drinking Water Act.

(14) [(8)] "Treatment works" has the meaning established by the federal act and the eligible components of the management programs established by Sections 319 and 320 of the federal act.

SECTION 6.16. Subchapter J, Chapter 15, Water Code, is amended by adding Section 15.6041 to read as follows:

Sec. 15.6041. FINANCIAL ASSISTANCE UNDER THE SAFE DRINKING WATER REVOLVING FUND. (a) The safe drinking water revolving fund shall be administered by the board under this subchapter and rules adopted by the board. The safe drinking water revolving fund shall be held and administered by the board in the same manner as provided by Section 15.603, except that the safe drinking water revolving fund shall be held and administered in accordance with the Safe Drinking Water Act and shall be used to provide financial assistance in accordance with that act and in the manner provided by rules adopted by the board:

(1) to political subdivisions for community water systems and for nonprofit noncommunity water systems;

(2) to persons other than political subdivisions for community water systems or nonprofit noncommunity water systems from the account established by Subsection (b)(1);

(3) to persons, including political subdivisions, for service to disadvantaged communities from the account established by Subsection (b)(2); and

(4) for other purposes authorized by the Safe Drinking Water Act.

(b) In addition to other accounts the board may establish in the safe drinking water revolving fund, the board shall establish the following separate accounts:

(1) the community/noncommunity water system financial assistance account, to be used solely for providing financial assistance to persons, other than political subdivisions, providing services through a community water system or a nonprofit noncommunity water system, which account shall be composed solely of funds appropriated by the legislature, funds provided as gifts or grants by the United States government, interest earnings on amounts credited to the account, and repayments of loans made from the account; and

(2) the disadvantaged community account, to be used solely for providing financial assistance under the terms of Subsections (c) and (d), which account shall be composed solely of funds appropriated by the legislature, funds provided as gifts or grants by the United States government, interest earnings on amounts credited to the account, and repayments of loans made from the account.

(c) The board may provide financial assistance from the disadvantaged community account to:

(1) a political subdivision:

(A) that is a disadvantaged community; or

(B) for a project serving an area that:

(i) is located outside the boundaries of the political subdivision; and

(ii) meets the definition of a disadvantaged community; or

(2) an owner of a community water system that is ordered by the commission to provide service to a disadvantaged community, provided that the financial assistance is for the sole purpose of providing service to a disadvantaged community.

(d) In providing financial assistance from the disadvantaged community account, the board shall determine the amount of a loan which the political subdivision cannot repay based on affordability criteria established by the board by rule. The board shall forgive repayment of that portion of the principal of the loan which the board determines the political subdivision cannot repay. Financial assistance from the disadvantaged community account may not exceed the allowable percentage of the amount of the capitalization grant received by the state pursuant to the Safe Drinking Water Act.

SECTION 6.17. Subsections (c) and (g), Section 15.603, Water Code, are amended to read as follows:

(c) The revolving fund consists of money derived from federal grants, direct appropriations, investment earnings on amounts credited to the revolving fund, and, at the board's discretion, from any and all sources available ~~(to provide the required state match for the purposes of this subchapter).~~

(g) The revolving fund and any accounts established in the revolving fund shall be kept and maintained by or at the direction of the board and do not constitute and are not a part of the State Treasury. However, at the direction of the board, the revolving fund or accounts in the revolving fund may be kept and held in escrow and in trust by the ~~comptroller~~ ~~(State Treasurer)~~ for and on behalf of the board, shall be used only as provided by this subchapter, and pending such use shall be invested in authorized investments as provided by any order, resolution, or rule of the board. Legal title to money and investments in the revolving fund is in the board unless or until paid out as provided by this subchapter, the federal act, and the rules of the board. The ~~comptroller~~ ~~(State Treasurer)~~, as custodian, shall administer the funds strictly and solely as provided by this subchapter and in the orders, resolutions, and rules, and the state shall take no action with respect to the revolving fund other than that specified in this subchapter, the federal act, and the rules of the board.

SECTION 6.18. Subsection (a), Section 341.031, Health and Safety Code, is amended to read as follows:

(a) Public drinking water must be free from deleterious matter and must comply with the standards established by the commission~~[-the United States Public Health Service,]~~ or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.).

SECTION 6.19. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.0315 to read as follows:

Sec. 341.0315. PUBLIC DRINKING WATER SUPPLY SYSTEM REQUIREMENTS.

(a) *To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:*

- (1) supply safe drinking water in adequate quantities;*
- (2) are financially stable; and*
- (3) are technically sound.*

(b) *The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.*

(c) *Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.*

(d) *The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.*

SECTION 6.20. Subchapter C, Chapter 341, Health and Safety Code, is amended by amending Section 341.035 and adding Sections 341.0351 through 341.0356 to read as follows:

Sec. 341.035. APPROVED PLANS REQUIRED FOR PUBLIC WATER SUPPLIES.

(a) *Except as provided by Subsection (d), a person may not begin construction of a public drinking water supply system unless the executive director of the commission approves:*

- (1) a business plan for the system; and*
- (2) the plans and specifications for the system.*

(b) *The prospective owner or operator of the system must submit to the executive director a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director:*

- (1) shall review the business plan; and*
- (2) may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws*

and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

(c) The prospective owner or operator of the proposed system shall provide to the commission ~~[A person contemplating establishing a drinking water supply system for public use must submit]~~ completed plans and specifications for review and approval in accordance with commission rules.

(d) A person is not required to file a business plan under Subsection (a)(1) or (b) if the person:

- (1) is a county;
- (2) is a retail public utility as defined by Section 13.002, Water Code, unless that person is a utility as defined by that section;
- (3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; or
- (4) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Chapter 361 or 382 of this code or Chapter 26, Water Code ~~[to the commission before construction of the system. The commission shall approve plans that conform to the state's water safety laws. The water supply system may be established only on the commission's approval].~~

Sec. 341.0351. NOTIFICATION OF SYSTEM CHANGES. ~~[(b)]~~ Any person ~~[agency]~~, including a municipality, supplying a drinking water service to the public that intends to make a material or major change in a water supply system that may affect the sanitary features of that utility must give written notice of that intention to the commission before making the change.

Sec. 341.0352. ADVERTISED QUALITY OF WATER SUPPLY. ~~[(c)]~~ A water supply system owner, manager, or operator or an agent of a water supply system owner, manager, or operator may not advertise or announce a water supply as being of a quality other than the quality that is disclosed by the commission's latest rating.

Sec. 341.0353. DRINKING WATER SUPPLY COMPARATIVE RATING INFORMATION. ~~[(d)]~~ The commission shall assemble and tabulate all necessary information ~~[data]~~ relating to public drinking water supplies at least once each year and as often during the year as conditions demand or justify. The information ~~[data]~~ forms the basis of an official comparative rating of public drinking water supply systems.

Sec. 341.0354. HIGHWAY SIGNS FOR APPROVED SYSTEM RATING. ~~[(e)]~~ A water supply system that attains an approved rating is entitled to erect signs of a design approved by the commission on highways approaching the municipality in which the water supply system is located. The signs shall be immediately removed on notice from the commission if the water supply system does not continue to meet the specified standards.

Sec. 341.0355. FINANCIAL ASSURANCE FOR CERTAIN SYSTEMS. (a) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Section 341.035, that has a history of noncompliance with this subchapter or commission rules, or that is subject to a commission enforcement action to:

- (1) provide the executive director of the commission with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules; and
 - (2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules in the form of a bond or as specified by the commission.
- (b) If the commission relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account and released only with the approval of the commission.

Sec. 341.0356. ORDER TO STOP OPERATIONS. (a) A public water supply system shall stop operations on receipt of a written notification of the executive director of the commission or an order of the commission issued under this section.

(b) The executive director or the commission may order a public water supply system to stop operations if:

- (1) the system was constructed without the approval required by Section 341.035; or*
- (2) the executive director determines that the system presents an imminent health hazard.*

(c) A notification or order issued under this section may be delivered by facsimile, by personal service, or by mail.

(d) A water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a commission meeting.

(e) The public water supply system may not resume operations until the commission, the executive director, or a court authorizes the resumption.

SECTION 6.21. Subsections (a) and (b), Section 341.047, Health and Safety Code, are amended to read as follows:

(a) A person commits an offense if the person:

- (1) violates a provision of Section 341.031;
- (2) violates a provision of Section 341.032(a) or (b);
- (3) violates a provision of Section 341.033(a)–(f);
- (4) constructs a drinking water supply system without submitting completed plans and specifications as required by Section 341.035(c) [341.035(a)];
- (5) begins construction of [establishes] a drinking water supply system without the commission's approval as required by Section 341.035(a);
- (6) violates a provision of Section 341.0351 or 341.0352 [341.035(b) or (e)];
- (7) fails to remove a sign as required by Section 341.0354 [341.035(e)]; or
- (8) violates a provision of Section 341.036.

(b) An offense under Subsection (a) is a Class C misdemeanor [punishable by a fine of not less than \$100].

SECTION 6.22. Subsections (b) through (i), Section 341.048, Health and Safety Code, are amended to read as follows:

(b) A person who causes, suffers, allows, or permits a violation under this subchapter shall be assessed a civil penalty of not less than \$50 nor more than \$1,000 [\$500] for each violation. Each day of a continuing violation is a separate violation.

~~(c) [If it is shown on a trial of the defendant that the defendant has previously been assessed a civil penalty under this section within a year before the date on which the violation being tried occurred, the defendant shall be assessed a civil penalty of not less than \$50 nor more than \$1,000 for each subsequent violation under this subchapter. Each day of a continuing violation is a separate violation.]~~

[(d)] If it appears that a person has violated, is violating, or threatens to violate a provision under this subchapter, the commission, a county, or a municipality may institute a civil suit in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) the assessment and recovery of a civil penalty; or
- (3) both injunctive relief and a civil penalty.

(d) [(e)] The commission is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(e) [(4)] On the commission's request, the attorney general shall institute a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(f) [(g)] The suit may be brought in:

(1) Travis County;

(2) [~~in~~] the county in which the defendant resides; or

(3) [~~or in~~] the county in which the violation or threat of violation occurs.

(g) [(h)] In a suit under this section to enjoin a violation or threat of violation of this subchapter, the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(h) [(4)] Civil penalties recovered in a suit brought under this section by a county or municipality shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

SECTION 6.23. Subsection (a), Section 341.049, Health and Safety Code, is amended to read as follows:

(a) If a person causes, suffers, allows, or permits a violation of this subchapter or a rule or order adopted under this subchapter, the commission may assess a penalty against that person as provided by this section. The penalty shall not be less than \$50 nor more than \$1,000 [\$500] for each violation. Each day of a continuing violation may be considered a separate violation.

SECTION 6.24. Section 1, Chapter 190, Acts of the 66th Legislature, Regular Session, 1979 (Article 1110f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. PURPOSE. The purpose of this Act is to clarify the authority of public entities that are lawfully authorized to engage in the collection, transportation, treatment, and disposal of sewage *and the conservation, storage, transportation, treatment, and distribution of water*, to join together as cotenants or coowners, or by concurrent resolution or ordinance, to create a public utility agency, to engage in the planning, financing, acquiring, constructing, owning, operating, and maintaining of facilities so that each public entity will owe all of the duties, will have and be secure in all of the rights, powers, and liabilities, and shall be entitled to all of the privileges and exemptions attributable to its undivided interest as a cotenant or coowner should the entities elect not to create a public utility agency, as provided by law with respect to an entire interest in facilities planned, financed, acquired, constructed, owned, operated, and maintained by it alone. These alternatives are to serve as a means of achieving economies of scale by providing essential *water and* sewage systems to the public and promoting the orderly economic development of the state while providing environmentally sound protection of future *water and* wastewater needs of the state and its inhabitants. The provisions of this Act shall be liberally construed to effectuate these purposes but shall not be construed to otherwise enlarge, change, or modify in any way the rights, powers, or authority of any public or private entity under existing law. Nothing in this Act shall be construed to alter, change, abrogate, or otherwise affect the existing contracts in force at the time this Act takes effect.

SECTION 6.25. Section 2, Chapter 190, Acts of the 66th Legislature, 1979 (Article 1110f, Vernon's Texas Civil Statutes), is amended by amending Subsections (2), (3), and (4) to read as follows:

(2) "Private entity" means any entity other than a public entity solely involved in financing, constructing, operating, and maintaining *water and* sewer facilities.

(3) "Facilities" means facilities necessary or incidental to the collection, transportation, treatment, or disposal of sewage *and to the conservation, storage, transportation, treatment, and distribution of water*, including plant sites, rights-of-way, and real and personal property and equipment and rights of every kind useful in connection with collection, transportation, treatment, or disposal of sewage *or with conservation, storage, transportation, treatment, and distribution of water*.

(4) "Public utility agency" or "agency" means any agency created under this Act by two or more public entities for the purpose of planning, financing, constructing, owning, operating, and maintaining facilities for the purpose of achieving economies of scale in providing *water or sewer services*.

SECTION 6.26. Subsection (a), Section 3, Chapter 190, Acts of the 66th Legislature, 1979 (Article 1110f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) To more readily accomplish the purposes of this Act, two or more public entities, by concurrent ordinances, may create an agency to be known as a public utility agency. The agency shall be without taxing power, and shall be a separate agency, a political subdivision of the state, and body politic and corporate exercising all of the powers that are conferred by Chapter 10, Title 28, Revised Civil Statutes of Texas, 1925, as amended, and this Act on a public entity. No agency is authorized to engage in any utility business other than the collection, transportation, treatment, or disposal of sewage *or the conservation, storage, transportation, treatment, and distribution of water* for the participating public entities that are joint owners with the agency of a facility located within the state. A public entity, at the time of the passage of the concurrent ordinance, must be one that has the authority to engage in the collection, transportation, treatment, or disposal of sewage *or the conservation, storage, transportation, treatment, and distribution of water*, but the entity may subsequently dispose of its facilities. Before the passage of a concurrent ordinance to create a public utility agency, the governing body of each public entity shall have notice of its intention to adopt the ordinance published in a newspaper of general circulation within the county in which the public entity is domiciled once a week for two consecutive weeks, the date of the first publication to be at least 14 days before the date set for the passage of the concurrent ordinance. The notice shall state the date, time, and place that the governing body proposes to pass the ordinance and that on the effective date of the concurrent ordinances the public entities adopting them shall have created a public utility agency. If, prior to the day set for the passage of a concurrent ordinance, 10 percent of the qualified electors of the particular public entity present a petition to the governing body requesting that a referendum election be called, the ordinance shall not become effective until a majority of the qualified electors of the entity voting in the election have approved the ordinance. The election shall be called and held in conformity with the Texas Election Code, as amended, Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended, and this Act. Except as provided in this Act, a concurrent ordinance shall not be subject to a referendum election.

SECTION 6.27. Subsections (f) and (g), Section 4, Chapter 190, Acts of the 66th Legislature, 1979 (Article 1110f, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) The agency may make contracts, leases, and agreements with and accept grants and loans from the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons and may generally perform all acts necessary for the full exercise of the powers vested in the agency. Each agency may contract with those public entities creating the agency for the collection, transportation, treatment, and disposal of sewage *or the conservation, storage, transportation, treatment, and distribution of water*, and the authority to contract for these services shall also extend to private entities under terms and conditions the agency's board of directors may consider appropriate. The agency may sell, lease, convey, or otherwise dispose of any right, interest, or property that is, in its judgment, not needed for the efficient operation and maintenance of its facilities. The responsibility of the management, operation, and control of the properties belonging to the agency shall be vested in the board of directors.

(g) The agency, in contracting with any public or private entity for wastewater collection, transmission, treatment, or disposal services *or for water conservation, storage, transportation, treatment, and distribution*, must charge rates sufficient to produce revenues adequate:

- (1) to pay all expenses of operation and maintenance;
- (2) to pay all interest and principal due on bonds issued as they become due and payable;
- (3) to pay the principal of and interest on any legal debt of the agency;
- (4) to pay all sinking and reserve fund payments as they become due and payable; and

(5) to fulfill the terms of any agreements made with the holders of any bonds.

The agency may also establish a reasonable depreciation and emergency fund. Payments made pursuant to contracts with the agencies are to constitute an operating expense of the public or private entity served as a result of the contracts unless otherwise prohibited by a previously outstanding obligation of the purchasing entity.

SECTION 6.28. Subchapter C, Chapter 13, Water Code, is amended by adding Section 13.045 to read as follows:

Sec. 13.045. NOTIFICATION REGARDING USE OF REVENUE. At least annually and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure not water or sewer related funded in whole or in part by customer revenue.

SECTION 6.29. Subchapter D, Chapter 13, Water Code, is amended by adding Section 13.086 to read as follows:

Sec. 13.086. FAIR WHOLESALE RATES FOR WHOLESALE WATER SALES TO A WATER DISTRICT. (a) A municipality that makes a wholesale sale of water to a special district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and that operates under Title 4 or under Chapter 36 shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

(b) This section does not apply to a sale of water under a contract executed before the effective date of this section.

SECTION 6.30. Section 13.411, Water Code, is amended to read as follows:

Sec. 13.411. ACTION TO ENJOIN OR REQUIRE COMPLIANCE. (a) If ~~it appears to~~ the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) If the executive director has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director shall immediately:

- (1) notify the utility's representative; and*
- (2) initiate enforcement action consistent with:*
 - (A) this subchapter; and*
 - (B) procedural rules adopted by the commission.*

SECTION 6.31. Section 13.418, Water Code, is amended to read as follows:

Sec. 13.418. DISPOSITION OF FINES AND PENALTIES; WATER UTILITY IMPROVEMENT ACCOUNT. (a) Fines and penalties collected under this chapter from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

(b) Fines and penalties collected from a public utility under this chapter in other than criminal proceedings shall be paid to the commission and deposited in the water utility improvement account as provided by Section 341.0485, Health and Safety Code [General Revenue Fund].

SECTION 6.32. Subchapter C, Chapter 341, Health and Safety Code, is amended by adding Section 341.0485 to read as follows:

Sec. 341.0485. WATER UTILITY IMPROVEMENT ACCOUNT. (a) The water utility improvement account is created outside of the state treasury.

(b) A civil or administrative penalty payable to the state that is collected from a utility for a violation of this subchapter shall be deposited in the account.

(c) The comptroller shall manage the account for the benefit of the commission and shall invest the money and deposit interest and other investment proceeds in the account. The comptroller shall release money from the account in the manner provided by the commission. Money in the account may be used only for:

(1) capital improvements to the water or sewer system of a utility that has paid fines or penalties under this chapter or under Chapter 13, Water Code, that have been deposited in the account; or

(2) capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Section 13.4132, Water Code.

(d) Money used under Subsection (c)(1) for a utility's system may not exceed the amount of the civil or administrative penalties the utility has paid. Capital improvements made with money from the account may not be considered as invested capital of the utility for any purpose. If the utility is sold to another owner, a portion of the sales price equivalent to the percentage of the used and useful facilities that were constructed with money under Subsection (c)(1) shall be immediately distributed equally to the current customers of the utility.

(e) Money used under Subsection (c)(2) may not be considered as invested capital of the utility for any purpose.

(f) In this section, "utility" has the meaning assigned by Section 13.002, Water Code.

SECTION 6.33. Subchapter L, Chapter 49, Water Code, is amended by adding Section 49.352 to read as follows:

Sec. 49.352. **MUNICIPAL SYSTEM IN UNSERVED AREA.** (a) This section applies only to a home-rule municipality that:

(1) is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million; and

(2) has within its boundaries a part of a district.

(b) If a district does not establish a fire department under this subchapter, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment.

(c) For purposes of this section, a municipality may obtain single certification in the manner provided by Section 13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by Section 13.255(b).

ARTICLE 7. WATER DATA COLLECTION AND DISSEMINATION

SECTION 7.01. Section 16.012, Water Code, is amended to read as follows:

Sec. 16.012. **STUDIES, INVESTIGATIONS, SURVEYS.** (a) The executive administrator shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state and shall, in cooperation with other entities of the state, guide the development of a statewide water resource data collection and dissemination network. For these purposes the executive administrator [staff] shall collect, receive, analyze, [and] process, and facilitate access to basic data and summary information concerning [the] water resources of the state and provide guidance regarding data formats and descriptions required to access and understand Texas water resource data.

(b) The executive administrator shall:

(1) determine suitable locations for future water facilities, including reservoir sites;

(2) determine suitable, cost-effective water supply alternatives on a regional basis, including voluntary means of encouraging aggressive water conservation;

- (3) locate land best suited for irrigation;
 - (4) ~~[(3)]~~ make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;
 - (5) ~~[(4)]~~ examine and survey reservoir sites; ~~[and]~~
 - (6) monitor ~~[(5)—investigate]~~ the effects of fresh water inflows upon the bays and estuaries of Texas;
 - (7) monitor instream flows;
 - (8) lead a statewide effort, in coordination with federal, state, and local governments, institutions of higher education, and other interested parties, to develop a network for collecting and disseminating water resource-related information that is sufficient to support assessment of ambient water conditions statewide;
 - (9) make recommendations for optimizing the efficiency and effectiveness of water resource data collection and dissemination as necessary to ensure that basic water resource data are maintained and available for Texas; and
 - (10) make basic data and summary information developed under this subsection accessible to state agencies and other interested persons.
- (c) In performing the duties required under Subdivisions (1), (4), (5), (6), and (7) of Subsection (b), the executive administrator shall consider advice from the Parks and Wildlife Department.
- (d) All entities of the state, including institutions of higher education, that collect or use water data or information shall cooperate with the board in the development of a coordinated, efficient, and effective statewide water resource data collection and dissemination network.
- (e) The executive administrator shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.
- (f) ~~[(4)]~~ In performing his duties under this section, the executive administrator shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.
- (g) No later than December 31, 1999, the commission shall obtain or develop an updated water availability model for six river basins as determined by the commission. The commission shall obtain or develop an updated water availability model for all remaining river basins no later than December 31, 2001.
- (h) Within 90 days of completing a water availability model for a river basin, the commission shall provide to all holders of existing permits, certified filings, and certificates of adjudication in that river basin the projected amount of water that would be available: during a drought of record; when flows are at 75 percent of normal; and when flows are at 50 percent of normal.
- (i) Within 90 days of completing a water availability model for a river basin, the commission shall provide to each regional water planning group created under Section 16.053 of this code in that river basin the projected amount of water that would be available if cancellation procedures were instigated under the provisions of Subchapter E, Chapter 11, of this code.
- (j) Within 90 days of completing a water availability model for a river basin, the commission, in coordination with the Parks and Wildlife Department, shall determine the potential impact of reusing municipal and industrial effluent on existing water rights, instream uses, and fresh-water inflows to bays and estuaries. Within 30 days of making this determination, the commission shall provide the projections to the board and each regional water planning group created under Section 16.053 of this code in that river basin.

SECTION 7.02. Section 16.021, Water Code, is amended to read as follows:

Sec. 16.021. TEXAS NATURAL RESOURCES INFORMATION SYSTEM. (a) The executive administrator shall establish the Texas Natural Resources Information System (TNRIS) to serve Texas agencies and citizens as a centralized clearinghouse and referral center for natural resource, census, and other socioeconomic data ~~[as a centralized information system incorporating all Texas natural resource data, socioeconomic data related to~~

~~natural resources, or indexes related to that data that is collected by state agencies or other entities).~~

(b) The Texas Geographic Information Council (TGIC) [~~Natural Resources Information System Task Force~~] is created to provide *strategic planning and coordination in the acquisition and use of geo-spatial data and related technologies in the State of Texas. The executive administrator and the executive director of the Department of Information Resources shall designate entities to be members of the TGIC. The chief administrative officer of each member entity shall select one representative to serve on the TGIC. The duties of the TGIC shall include providing guidance to the executive administrator in carrying out his duties under this section and guidance to the Department of Information Resources for development of rules related to statewide geo-spatial data and technology standards. [The task force is composed of one representative from each state agency designated by the executive administrator. The executive administrator shall designate a state agency as a participant in the task force if the agency collects or uses natural resource and related socioeconomic data. Representatives of each designated agency shall be selected by the chief administrative officer of that agency.]*

(c) Under the guidance of the TGIC [~~Texas Natural Resources Information System Task Force~~], the executive administrator shall:

(1) *further develop [and implement] the Texas Natural Resources Information System by promoting and providing for effective acquisition, archiving, documentation, indexing, and dissemination of natural resource and related digital and nondigital data and information;*

(2) *obtain information in response to disagreements regarding names and name spellings for natural and cultural features in the state and provide this information to the Board on Geographic Names of the United States Department of the Interior;*

(3) *make recommendations to the Board on Geographic Names of the United States Department of the Interior for naming any natural or cultural feature subject to the limitations provided by Subsection (d) of this section;*

(4) *make recommendations to the Department of Information Resources to adopt and promote standards that facilitate sharing of digital natural resource data and related socioeconomic data among federal, state, and local governments and other interested parties;*

(5) *acquire and disseminate natural resource and related socioeconomic data describing the Texas-Mexico border region; and*

(6) *coordinate, conduct, and facilitate the development, maintenance, and use of mutually compatible statewide digital base maps depicting natural resources and man-made features.*

(d) A recommendation may not be made under Subdivision (3) of Subsection (c) of this section for:

(1) *a feature previously named under statutory authority or recognized by an agency of the federal government, the state, or a political subdivision of the state;*

(2) *a feature located on private property for which consent of the property owner cannot be obtained; or*

(3) *naming a natural or cultural feature for a living person.*

SECTION 7.03. On September 1, 1997, the Texas Natural Resources Information System Task Force and the Texas Geographic Information Systems Planning Council are merged into the Texas Geographic Information Council. All designated member agencies of both predecessor entities shall continue to serve as member agencies of the Texas Geographic Information Council.

ARTICLE 8. INTERIM COMMITTEE ON WATER RESOURCES DEVELOPMENT AND MANAGEMENT

SECTION 8.01. CREATION AND COMPOSITION. (a) The Interim Committee on Water Resources Development and Management is created to study the state's water supply and wastewater infrastructure needs.

(b) The committee consists of 10 members, of whom:

(1) five shall be appointed by the speaker of the house of representatives from the members of the house of representatives; and

(2) five shall be appointed by the lieutenant governor from the members of the senate.

(c) The lieutenant governor and the speaker of the house of representatives each shall appoint a presiding officer from among the members appointed to the committee.

(d) The committee shall convene at the call of the two presiding officers.

SECTION 8.02. DUTIES AND POWERS. (a) The committee is specifically charged to review:

(1) Texas' current inventory of water resources, including water supply and wastewater treatment infrastructure;

(2) projections for Texas' future water and wastewater needs to the year 2050;

(3) the role of the state and regional and local entities in participation and investment in water-related projects; and

(4) the implementation of Senate Bill No. 1, Acts of the 75th Legislature, Regular Session, 1997.

(b) In addition, the committee shall develop recommendations to:

(1) assist Texas communities having limited financial capabilities with their water supply and wastewater infrastructure needs;

(2) ensure efficient allocation of state and local resources through the use of regional water facilities and management, including water market transactions; and

(3) help local governments to meet the financial costs created by federal and state water quality regulations.

(c) The committee may travel around the state and hold hearings or public meetings as needed to fulfill its duties under this article.

(d) The Senate Committee on Natural Resources and the House Committee on Natural Resources shall provide staff to the committee.

SECTION 8.03. EXPENSES. The committee shall submit a proposed budget to the appropriate committee on administration in each house. The administrative committees shall jointly approve the committee budget in an amount appropriate for the committee to accomplish its duties under this article.

SECTION 8.04. REPORT. Not later than January 5, 1999, the committee shall report to the governor, the lieutenant governor, the speaker of the house of representatives, and members of the 76th Legislature the committee's findings and recommendations for necessary legislation.

ARTICLE 9. REPEALER; EFFECTIVE DATE; SAVING; EMERGENCY

SECTION 9.01. Section 11.028, Water Code, is repealed.

SECTION 9.02. (a) Except as provided by Subsections (b) through (f) of this section, this Act takes effect September 1, 1997.

(b) This section and Sections 2.03, 2.09, 2.10, 2.18, and 3.03 of this Act take effect immediately.

(c) Section 4.40 of this Act takes effect on the first day of the first calendar quarter beginning on or after the date that it may take effect under Section 39, Article III, Texas Constitution.

(d) The change in law made by Section 4.40 of this Act to Section 151.318, Tax Code, does not affect taxes imposed before the effective date of Section 4.40 of this Act, and the law in effect before the effective date of that section is continued in effect for purposes of liability for and collection of those taxes.

(e) Sections 5.03 and 5.05 through 5.08 of this Act take effect on the date on which the constitutional amendment proposed by S.J.R. No. 17, 75th Legislature, Regular Session, 1997, takes effect. If that amendment is not approved by the voters, those sections have no effect.

(f) Section 5.11 of this Act takes effect on the date on which the constitutional amendment proposed by S.J.R. No. 45, 75th Legislature, Regular Session, 1997, takes effect. If that amendment is not approved by the voters, that section has no effect.

(g) The change in law made by Section 5.11 of this Act to Subchapter B, Chapter 11, Tax Code, does not affect taxes imposed before the effective date of Section 5.11 of this Act, and the law in effect before the effective date of that section is continued in effect for purposes of liability for and collection of those taxes.

SECTION 9.03. Section 11.0842, Water Code, as added by this Act, and the changes to Sections 11.082 and 12.052, Water Code, made by this Act are not applicable to any violation relating to the construction of a dam or reservoir for domestic and livestock purposes initiated before March 2, 1997, if a registration for authorization is submitted to the Texas Natural Resource Conservation Commission not later than September 1, 1999, unless modifications other than repairs are made to the dam or reservoir on or after March 2, 1997. On registration of the location, approximate size, and date of completion of the dam or reservoir, the commission shall issue a permit for the dam or reservoir relating back to the date of completion of construction. The date of completion of construction may be established by the submission of competent evidence.

SECTION 9.04. (a) The requirement of Section 341.035, Health and Safety Code, as amended by Section 6.20 of this Act, that certain persons must provide the executive director of the Texas Natural Resource Conservation Commission with a business plan, applies only to the prospective owner or operator of a public drinking water supply system for which construction begins on or after September 1, 1997.

(b) Section 341.0355, Health and Safety Code, as added by Section 6.20 of this Act, applies to the owner or operator of a public drinking water supply system regardless of the date construction of the system began.

SECTION 9.05. (a) A change in law made by this Act that applies to a criminal, civil, or administrative penalty applies only to an offense committed or a violation that occurs on or after the effective date of this Act. For the purposes of this Act, an offense is committed or a violation occurs before the effective date of this Act if any element of the offense or violation occurs before that date.

(b) An offense committed or violation that occurs before the effective date of this Act is covered by the law in effect when the offense was committed or the violation occurred, and the former law is continued in effect for this purpose.

SECTION 9.06. An Act creating a groundwater conservation district that requires a confirmation election enacted by the 71st, 72nd, 73rd, or 74th Legislature is repealed, effective on the second anniversary of the effective date of this Act, unless the district has been approved at a confirmation election before the second anniversary of the effective date of this Act.

SECTION 9.07. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on April 3, 1997: Yeas 31, Nays 0; May 24, 1997, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 26, 1997, House granted request of the Senate; June 1, 1997, Senate adopted Conference Committee Report: Yeas 31, Nays 0; passed the House, with amendments, on May 23, 1997, by a non-record vote; May 26, 1997, House granted request of the Senate for appointment of Conference Committee; June 1, 1997, House adopted Conference Committee Report: Yeas 140, Nays 4, one present not voting.

Approved June 19, 1997.

Effective September 1, 1997, except as provided in § 9.02(b) to (f).